Handbook on Client Trust Accounting for California Attorneys

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The Handbook contains legal information, not legal advice. Nothing contained in this Handbook is intended to address any specific legal inquiry, nor is it a substitute for independent legal research to original sources or for obtaining the advice of legal counsel with respect to legal problems.

Acknowledgments

The State Bar of California gratefully acknowledges that the idea for this Handbook arose out of the exhaustive book on client trust accounting prepared by David Johnson, Jr., the Director of Attomey Ethics of the Supreme Court of New Jersey. Although the client trust accounting rules in New Jersey differ from those in California, the same basic principles of accounting apply. As the discussion of the basic principles in the New Jersey materials is so good, this Handbook borrows extensively from it.

This Handbook was developed by Jay Ladin, Senior Administrative Assistant in the Office of Professional Competence, Planning and Development, with the assistance of Dominique Snyder, Senior Trial Counsel, Office of Intake/Legal Advice, and Karen Betzner, Associate Senior Executive for Professional Competence, Standards and Certification. Production of the Handbook, and subsequent updates were coordinated by Lauren McCurdy, Sr. Administrative Specialist, as assisted by Felicia Soria, Administrative Secretary, Office of Professional Competence.

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Foreword

This handbook is intended as a tool to help every California attorney fulfill their statutory and ethical obligations to clients whose money and other properties they hold in trust. Even if you never hold money or other properties for clients, it's imperative that you understand these obligations. Your license may depend on it.

This handbook assumes that you know very little about client trust accounting and is devoted to teaching you the basics necessary for you to properly account for your client's money. It will explain the rules governing your client trust accounting duties, the concepts behind client trust accounting, and a simple step-by-step system for accounting for your clients' money. To keep from distracting you from basic accounting, the citations have been kept to a minimum. The text of the relevant authorities, as well as an index of applicable cases, are attached as Appendices 2 and 3.

This handbook is not intended to address all the complex legal issues related to handling client money. To help you find answers for these and other questions about your professional responsibilities, the State Bar of California has a variety of resources available:

- The State Bar publishes a booklet called *The California State Bar Act and Rules of Professional Conduct* that contains the provisions of the Business and Professions Code and California Rules of Court relevant to attorneys, the Rules of Professional Conduct and other statutes contained in other codes relevant to your professional responsibilities, including the Evidence Code and the Civil Code. This booklet is available from the State Bar for a fee. To order a copy, call (415) 538-2112.

- The State Bar offers a toll-free, confidential Ethics Hotline, which you can call to discuss ethics issues with staff who are specially trained to refer you to relevant authorities. The Ethics Hotline can be reached at 1-800-2-ETHICS or 1-800-238-4427.

- The State Bar publishes a multi-volume desk reference called the *California Compendium on Professional Responsibility*, which contains ethics opinions issued by the State Bar, the Los Angeles, San Francisco and San Diego county bar association ethics committees, the authorities in *The California State Bar Act and Rules of Professional Conduct*, the American Bar Association Rules and Code, the Code of Judicial Conduct, and a detailed subject matter index that will direct you to the relevant authorities. The *Compendium*, which costs $145.00 (plus tax), is updated annually for an additional $40 per year. To order a copy, call (415) 538-2112.

- The State Bar publishes the *California State Bar Court Reporter*, which includes the full text of published opinions of the State Bar Court Review Department, comprehensive headnotes, case summaries and a detailed index and digest. A subscription to the *California State Bar Court Reporter* costs $395, and may be ordered by calling (415) 538-2017.

SECTION I: THE IMPORTANCE OF CLIENT TRUST ACCOUNTING

If you died suddenly, would your clients—or the executors who have to answer to your clients—be able to tell how much of the money in your various professional accounts belonged to each client? If a State Bar investigator asked you to account for a particular client's money, would you be able to? Would they find complete, systematic, up-to-date records showing what's been received and paid out for each client, or would they find a random assortment of cancelled checks, unopened bank statements, and checkbook registers full of cryptic notations and rounded-off figures? In these situations, the fact that you "have it all in your head" isn't going to help your clients find their money or satisfy the State Bar.

There are two completely mistaken ideas about client trust accounting. One idea is that client trust accounting is a mysterious, complicated process that requires years of training and innate mathematical ability. The other is that "maintaining a client trust account" simply means opening a bank account and depositing clients' funds into it.

The truth is that client trust accounting is a simple set of procedures that is easy to learn and easy to practice. It doesn't require financial wizardry or mathematical genius; all it requires is consistent, careful application. But as simple as it is, client trust accounting still means more than keeping money in the bank. A bank account is something you have; client trust accounting is something you do in order to know—and to show your clients that you know—how much of the money in your account belongs to each client. To clear up this confusion, in this handbook, we never say "client trust account." We say "client trust accounting"—when we mean what you have to *do* to account for your clients' money—or "client trust bank account"—when we mean the bank account where you keep your clients' money.

Whether you find it easy or difficult, the fact is that if you agree to hold money in trust, you take on a non-delegable, *personal* fiduciary responsibility to account for every penny as long as the funds remain in your possession. No matter whom you hire to do your books or fill out your deposit slips, you have full responsibility for his or her actions when you receive money in trust. This responsibility can't be transferred, and it isn't excused by ignorance, inattention, incompetence or dishonesty by you, your employees or your associates. The legal and ethical obligation to account for those monies is yours and yours alone, regardless of how busy your practice is or how hopeless you are with numbers. You may employ others to help you fulfill this duty, but if you do you must provide adequate training and supervision. Failure to live up to this responsibility can result in personal monetary liability, fee disputes, loss of clients and public discipline.

The essence of client trust accounting is contained in these three words:

Client—These duties arise in the context of an attorney-client relationship, regardless of whether you are paid for your services, and are as inviolable as your duty to maintain client confidences. These duties may also be owed to third parties.

Trust—The willingness of people to trust a complete stranger with money just because the stranger is an attorney is a fundamental aspect of the attorney-client relationship, and maintaining that trust is the duty of every individual attorney and a matter of supreme public interest.

Accounting—The way to fulfill your clients' trust is to be able at any time to make a full and accurate accounting of all money you've received, held and paid out on their behalf.

That's all "client trust accounting" means. If you follow the simple procedures explained below, you will never have to worry about failing to live up to your duties as a fiduciary no matter how complex or busy your practice.

SECTION II: THE RULES

California's Rule of Professional Conduct 4-100 is called "Preserving Identity of Funds and Property of a Client." The whole point of rule 4-100—and client trust accounting—is to make sure you know exactly how much of the money you are holding for clients belongs to each individual client.

Imagine how you'd feel if you asked your bank how much money was in your personal account, and they explained that they couldn't tell you because business was booming and keeping exact records of so much money for so many people would just take too much time. You'd probably feel that if knowing how much of your money they have is too much trouble, the bank shouldn't be holding your money. That's exactly how your clients feel about you. You keep records so you can give your clients an accounting of their money; failing to do so is a violation of your professional responsibilities.

Keeping track of exactly what's happening with a client's money is your personal, non-delegable ethical responsibility. The minute you *don't* keep track, you are in violation of the client trust accounting rules. The longer you don't know, the more violations you're likely to stumble into, and if you keep stumbling, sooner or later you're going to stumble into a State Bar investigation.

And don't think if you keep enough of your own money in the client trust bank account that everything's alright. Not only doesn't that satisfy your professional responsibility to your clients, it constitutes an additional violation known as "commingling." In short, the only adequate way to fulfill your fiduciary responsibility to your clients is to keep track of, at all times, how much of their money you have in your client trust bank account.

Maintaining a common client trust bank account in which the funds of more than one client are held is fine, as long as you keep an accurate record of what belongs to each client. That's what client trust accounting is all about.

California Rule of Professional Conduct 4-100

In some states, rules and statutes spell out detailed recordkeeping requirements for attorneys. California doesn't do that. (See Appendix 2, page 44, for the text.)

Rule 4-100 only requires that you maintain sufficient records so that you keep track of how much money you are holding for each client at all times, and you can later prove that you knew it.

Rule 4-100 essentially comes down to this:

- All funds you receive from or hold for a client must be deposited into a bank account that is clearly labelled as a client trust bank account.

- When you receive other properties on behalf of a client, you have to identify what you've received in your written records, actually label the properties to identify the owner, and immediately put them into a safe deposit box or some other place of safe keeping.

- All client trust bank accounts must be maintained in California, unless it is more convenient for the client for the account to be located elsewhere. In that case, you have to get the client's consent in writing before you can deposit the client's funds outside of California.

- Whenever you receive money or other property on behalf of a client, you have to promptly notify that client of that fact.

You can't *deposit* any money belonging to you or your law firm into any of your client trust bank accounts (except for the small amounts of money necessary to cover bank charges). This is known as commingling.

You can't *keep* any money belonging to you or your law firm (other than money for bank charges) in any of your client trust bank accounts. This is also known as commingling. That means that when you're holding client money that includes your fees, you have to take those fees out of the client trust bank account *as you earn them.* It's not a matter of your convenience; you are ethically required to withdraw your money from that account as soon as you reasonably can. (In fact, it would be a good idea for you to withdraw your fees on a regular basis, perhaps when you do your monthly reconciliation. (See **Reconciliation**, page 25.)

Money held in a client trust bank account becomes yours and not the client's as soon as, in the words of rule 4-100(A)(2), your "interest in that portion becomes fixed." BUT—and this is a big but—you can't withdraw any fees that the client disputes. As far as you're concerned, from the moment a client disputes your fee, that money is frozen in the client trust bank account until the fee dispute is resolved. As soon as your interest becomes fixed and is not in dispute, you are obligated to withdraw that money promptly from the client trust bank account. If you have withdrawn fees that the client later disputes, you should deposit an amount equal to the disputed funds into the client trust bank account until the dispute is resolved.

When your clients ask you for money or other properties that you're holding for them, you must deliver them promptly.

When clients ask you how much money you're holding for them or what you've done with the money while you've had it, you must tell them.

When the State Bar asks you how much money you're holding for the client or what you've done with it while you've had it, you must tell the State Bar.

For at least five years after you disburse them, you have to keep complete records of all client money, securities or other properties that are entrusted to you.

What rule 4-100(C) requires, as the mandatory minimum, is:

Client Ledger. This is a written ledger for each client that details every monetary transaction on behalf of that client. If you have a common client trust bank account in which the funds of more than one client are deposited, this is where you keep track of individual clients' money.

Account Journal. This is a written journal for each client trust bank account. This is where you keep track of the money going in and out of a client trust bank account. When you have a bank account that's designated solely for one client's money, the account journal will be identical to the client ledger.

Bank Statements and Cancelled Checks. You must keep all bank statements and cancelled checks for each client trust bank account, individual or common. These records show that the entries in your client ledger and account journal are accurate.

Reconciliation. You must keep a written record showing that every month you "reconciled" or balanced the account journals you keep for each client trust bank account against the client ledgers you keep for each client and the cancelled checks and bank statements for those accounts.

Journal of Other Properties. You must keep a written journal of all securities or other properties you hold in trust for clients that explains what you are holding, who you are holding it for, when you received it, when you distributed it, and who you distributed it to.

Duties to Third Parties

In some circumstances, you have the same duties to third parties as you have to your clients for money you've received and paid out in the context of an attorney-client relationship. An attorney who receives money on behalf of a party who is not the attorney's client becomes a fiduciary to the party. Where an attorney assumes the responsibility to disburse funds as agreed by the parties in an action, the attorney owes an obligation to the party who is not the attorney's client to ensure compliance with the terms of the agreement. If there is a dispute between the client and the third party, the attorney must retain the funds in trust until the resolution of the dispute.

Even though Rule of Professional Conduct 4-100(B)(4), requiring payment of client funds upon demand, refers only to an attorney's obligation to pay **clients,** the rule also applies in instances where an attorney is in possession of funds to be paid to a client's medical provider. Accordingly, where an attorney failed to honor a medical lien and failed to make agreed-upon payments to the doctor, the attorney could properly be found culpable of violating Rule of Professional Conduct 4-100. (See **When MUST You Make Payments**, page 17.)

An attorney's duty does not end with payment to the client of the client's ultimate share of the recovery. The attorney has an ongoing fiduciary duty to the client to hold in trust the remaining settlement funds subject to further directions from the client regarding disbursement. Therefore, an attorney's responsibilities to the client requires honoring the client's agreements with medical lien providers.

Business and Professions Code Sections 6211 and 6212

Your client trust accounting duties are also governed by Business and Professions Code sections 6211 and 6212. (See Appendix 2, page 57–58, for the text of those sections and pages 63–64 for rules 1–1.5 of the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons.) When a client gives you a "nominal" amount of money, or money that you will hold for a "short period of time," you must hold the money in a common client trust bank account which is set up so that the interest the account earns will be paid by the bank to the State Bar. By law, the State Bar distributes this money to programs that provide legal services in civil matters to the poor. (See **"IOLTA" Accounts,** page 11.)

Other Regulations Relating to Clients and Money

There are other rules relating to clients and money that, while not directly related to client trust accounting, are so fundamental to the attorney-client relationship that we have to mention them in this handbook. These rules, which relate to setting fees, fee agreements, fee disputes, loans to and from clients, securing payment of fees and cash reporting requirements, are discussed in Appendix 1, and the text of these rules can be found in Appendix 2.

SECTION III: KEY CONCEPTS IN CLIENT TRUST ACCOUNTING

The following seven key concepts are all the background you need in order to understand your client trust accounting responsibilities.

Separate Clients Are Separate Accounts

Client A's money has nothing to do with Client B's money. Even when you keep them in a common client trust bank account, each client's funds are completely separate from those of all your other clients. In other words, you are **NEVER** allowed to use one client's money to pay either another client's or your own obligations.

The most direct way to keep one client's money separate from another's would be to create individual bank accounts for each client. But in most private law practices, this is impractical. Most attorneys keep many clients' money in one common client trust bank account.

When you keep your clients' money in a common client trust bank account, the way to distinguish one client's money from another's is to keep a client ledger (as required by rule 4-100(C)) of each individual client's funds. The client ledger tells you how much money you've received on behalf of each client, how much money you've paid out on behalf of each client, and how much money each client has left in your common client trust bank account. If you are holding money in your common client trust bank account for 10 clients, you have to maintain 10 separate client ledgers. If you keep each client's ledger properly, you will always know exactly how much of the money in your common client trust bank account belongs to each client. If you don't, you will lose track of how much money each client has, and when you make payments out of your client trust bank account, you won't know which client's money you are using.

You Can't Spend What You Don't Have

Each client has only his or her own funds available to cover their expenses, no matter how much money belonging to other clients is in your common client trust bank account. Your common client trust bank account might have a balance of $100,000, but if you are only holding $10.00 for a certain client, you can't write a check for $10.50 on behalf of that client without using some other client's money.

The following example graphically illustrates this concept. Assume you are holding a total of $5,000 for four clients in your common client trust bank account as follows:

Client A	$1,000
Client B	$2,000
Client C	$1,500
Client D	$ 500
Total	$5,000

If you write a check for $1,500 from the common client trust bank account for Client D, $1,000 of that check is going to be paid for by Clients A, B and C. The funds you are holding in trust for them are being used for Client D's expenses. You should have a total of $4,500 for Clients A, B and C, but you only have $3,500 left in the trust account. In State Bar disciplinary matters, a finding of a failure to maintain a sufficient client trust account balance will support a finding of misappropriation.

There's No Such Thing As a “Negative Balance”

It's not uncommon in personal checkbooks for people to write checks against money they haven't deposited yet or hasn't cleared yet, and show this as a “negative balance.” In client trust accounting, there's no such thing as a negative balance. A “negative balance” is at best a sign of negligence and, at worst, a sign of theft. (Don't think that because you have

"automatic overdraft protection" on your client trust bank account and the check doesn't bounce, you have fulfilled your client trust account responsibilities.)

In client trust accounting, there are only three possibilities:

You have a **positive** balance (while you are holding money for a client);
You have a **zero** balance (when all the client's money has been paid out); or
You have a balance of **less than zero** (a so-called "negative balance") and a problem.

Timing Is Everything

It takes anywhere from a day to several weeks after you make a deposit before the money becomes "available for use." A client's funds aren't "available" for you to use on the client's behalf until they have cleared the banking process and been credited by the bank to your client trust bank account. (This is especially true when you receive an insurance company's settlement draft —which cannot clear until the company actually receives the draft at its home office during the bank collection process and honors the draft. Thus, insurance company settlement drafts will take longer to clear your account.) If you write a check for a client at any time *before* that client's funds clear the banking process and are credited to your client trust bank account, either the check will bounce or you will be using other clients' money to cover the check.

The time it takes for client trust account funds to become available after deposit depends on the form in which you deposit them. Every bank has different procedures, so when you open your client trust bank account, get the bank's schedule of when funds are available for withdrawal. Depending on the instrument, you may have to wait as many as 15 working days before you can be reasonably confident that the funds are available. For example, even if you make a cash deposit, the money may not be available for use until the following day. If you deposit a personal check from an out-of-state bank, the money will take longer to be available. Either way, until the bank has credited a client's deposit to your client trust bank account, you can't pay out any portion of that money for that client.

You also need to know what time your bank has set as the deadline for posting deposits to that day's business and for paying checks presented to it. Otherwise, even when you have deposited cash, you may end up drawing on uncollected funds. For example, let's say your bank credits any deposit made after 3 p.m. on the following day, but stays open for business until 5 p.m. Your client arrives at 3:30 and gives you $5,000 in cash which you immediately deposit. At 4 p.m., you write a client trust bank account check to an investigator against that money. If the investigator presents the check for payment at the bank before it closes at 5 p.m., the check will either bounce or be covered by other clients' money.

You may be tempted to do your client a favor by writing a check to the client for settlement proceeds before the settlement check has cleared because you know there's money belonging to other clients in your client trust bank account to cover this client's check. Depending on the circumstances, your client may insist that you do this. Don't. If you do, you'll end up writing a check to one client using another clients' money. You shouldn't help one client at the expense of your obligations to your other clients. In other words, no matter how expedient or kind or convenient it seems, don't make payments on your clients' behalf before their deposited funds have cleared. Otherwise, sooner or later, you'll end up spending money your clients don't have.

Some banks offer an "instant credit" arrangement where the bank agrees to immediately credit accounts for deposits while the bank waits for the funds from another financial institution. Beware of this service because it is, in essence, a loan to the attorney that is deposited in the client trust bank account, and thus a commingling of funds.

You Can't Play the Game Unless You Know the Score

In client trust accounting, there are two kinds of balances: the "running balance" of the money you are holding for each *client*, and the "running balance" of each *client trust bank account.*

A "running balance" is the amount you have in an account after you add in all the deposits (including interest earned, etc.) and subtract all the money paid out (including bank charges for items like wire transfers, etc.). In other words, the running balance is what's in the account at any given time. The running balance for each *client* is kept on the client ledger, and the running balance for each *client trust bank account* is kept on the account journal. (A sample client ledger and a sample account journal are shown in Appendix 4, pages 70 and 71.)

Maintaining a running balance for a client is simple. Every time you make a deposit on behalf of a client, you write the amount of the deposit in the client ledger and *add* it to the previous balance. Every time you make a payment on behalf of the client, you write the amount in the client ledger and *subtract* it from the previous balance. The result is the running balance. That's how much money the client has left to spend.

You figure out the running balance for the client trust bank account the same way. Every time you make a deposit to the client trust bank account, you write the amount of the deposit in the account journal and *add* it to the previous balance. Every time you make a payment from the client trust bank account, you write the amount in the account journal and *subtract* it from the previous balance. The result is the running balance. That's how much money is in the account.

Since "you can't spend what you don't have" (Key Concept 2, **You Can't Spend What You Don't Have,** page 5), you should check the running balance in each client's client ledger before you write any client trust bank account checks for that client. That way, if your records are accurate and up-to-date, it's almost impossible to pay out more money than the client has in the account.

The Final Score Is Always Zero

The goal in client trust accounting is to make sure that every dollar you receive on behalf of a client is ultimately paid out. What comes in for each client must equal what goes out for that client; no more, no less.

Many attorneys have small, inactive balances in their client trust bank accounts. Sometimes these balances are the result of a mathematical error, sometimes they are part of a fee you forgot to take, and sometimes a check you wrote never cleared or wasn't cashed.

Whatever the reason, as long as the money is in your client trust bank account, you are responsible for it. The longer these funds stay in the bank, the harder it is to account for them. Therefore, you should take care of those small, inactive balances as soon as possible, including, if necessary, following up with payees to find out why a check hasn't cleared.

If you take steps to take care of these small balances and are still unable to pay out the funds, you should consider whether the unclaimed monies escheat to the state pursuant to Code of Civil Procedure section 1518. (See Appendix 2, page 58, for the text.)

Always Maintain an Audit Trail

An "audit trail" is the series of bank-created records, like cancelled checks, bank statements, etc., that make it possible to trace what happened to the money you handled. An audit trail should start whenever you receive funds on behalf of a client and should continue through the final check you issue against them. Without an audit trail, you have

no way to show that you have taken proper care of your clients' money, or to explain what you did with the money if any questions come up. The audit trail is also an important tool for tracking down accounting errors. If you don't maintain an audit trail, you will find it hard to correct the small mistakes, like errors in addition or subtraction, and the big mistakes, like miscredited deposits, that are inevitable when you handle money.

The key to making a good audit trail is being descriptive. Let's say you are filling out a deposit slip for five checks relating to three separate clients. All the bank requires you to do is write in the bank identification code for each check and the check amounts. This doesn't identify which client the money belongs to. If you include the name of the client and keep a copy or make a duplicate, you will know which client the check was for, which is the purpose of an audit trail. That will make it easy to answer any questions that come up, even years later.

By the same token, every check you write from your client trust bank account should indicate which client it's being written for, so that it's easy to match up the money with the client. That means you should **NEVER** make out a client trust bank account check to cash, because there's no way to know later who actually cashed the check. If you are handling more than one case for the client, indicate which matter the payments and receipts relate to on your checks and deposit slips.

A good audit trail, one that will make it easy for you to explain what happened to each client's money and to correct accounting errors, requires that you keep more than just the minimum records required by rule 4-100(C). In the following list of elements of a good audit trail, records that are required by rule 4-100(C) are in bold. (See **What Bank-Created Records Do You Have to Keep?**, page 19.) Records that aren't in bold are important for keeping track of your clients' money but are not specified in the rule 4-100(C) standards.

A good audit trail should include:

- The initial deposit slip (or a duplicate copy or bank receipt). This should show the date the deposit slip was filled out; the amount of the deposit; the name or file number of the client on whose behalf the money was received; who the money came from; and the bank's date stamp showing the day the deposit was actually received.

- **The bank statement which shows when the deposit was actually posted by the bank.**

- The checkbook stub, which should show when payments were made, how much the payments were, to whom they were made and in connection with which client matter they were made.

- **The cancelled check**. In a good audit trail, the check should show the date the check was drawn; the amount of payment; who the check was made out to; the purpose of the check (or the matter it relates to); the order in which the check was negotiated (from the endorsements); and the date it was deposited for collection.

- **The bank statement which shows the date the trust account was actually charged for the check.**

- Copies of the front and back of any executed drafts, especially insurance settlement drafts, received on behalf of a client.

SECTION IV: OPENING A CLIENT TRUST BANK ACCOUNT

Rule of Professional Conduct 4-100(A) states:

> All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled 'Trust Account,' 'Client's Funds Account,' or words of similar import....

In other words, whenever you receive or hold money for clients—or any other persons with whom you have a fiduciary relationship—you have to deposit the money into a specifically labeled client trust bank account. As we detail below, client trust bank accounts are a special kind of bank account. Bankers who have experience with them can help you set up and administer your client trust bank account properly. When you first open the account, make sure the bankers you're dealing with know what a client trust bank account is; if they don't, ask to work with someone else.

General Dos and Don'ts

Client trust bank accounts:

- **Must** be maintained in California. Rule 4-100(A) says you are only allowed to keep client funds outside of California when you have the written consent of your client. Unless most of your clients are from out-of-state and you routinely get their written consent to keep their funds somewhere else, your common client trust bank account must be maintained in California.

- **Must** be maintained in a bank that is regulated by a federal or state agency and has its deposits insured by the federal government.

- **Should** be maintained in a financially stable bank. This isn't a rule; it's common sense. As your clients' fiduciary, if the bank you've put their money in goes under, you're in for some trouble. Even if your bank is federally insured, that insurance only covers $100,000 per client. (The per-client limit includes *all* money the client has on deposit at that bank. In other words, if you are holding $80,000 for a client at a certain bank, and the client has another $40,000 on deposit at the same bank, only $100,000 of the $120,000 the client is holding in the bank is covered.) Even if all your clients' money is covered, by the time the FDIC pays your clients their money, your clients could have, for example, missed a business opportunity. (As we will discuss later, if your bank goes under, you also may have a hard time getting copies of your client trust bank account records.) Like most client trust accounting problems, the answer to this is simple; keep your client trust bank accounts in banks that you're reasonably sure are financially secure.

- **Must** be identified as a client trust bank account. Rule 4-100(A) says that the name of any account where you keep your clients' money must clearly tell the bank, your clients, your employees, the State Bar, the people you pay out your clients' funds to and everyone else that it is a client trust bank account. Whatever name you choose, you can avoid all kinds of problems if the name of the account is prominently displayed on all your client trust bank account checks, deposit slips and other documents. Make sure that papers relating to your client trust bank account look different from those relating to your personal account or your general office account. For example, you can have your client trust bank account checks printed on paper that's a different color than your other checks.

Should limit accessibility of funds. Ideally, you should be the *only* person authorized to sign client trust bank account checks and otherwise pay out client funds. However, for practical reasons, many practitioners make their secretaries, bookkeepers or spouses authorized signatories. Since *you* are individually, personally accountable for all client funds you receive or hold in trust, and since this accountability can't be delegated to anyone else, allowing other people access to your client trust bank account is risky. By the same token, you should never pre-sign client trust bank account checks and leave them for employees to issue.

Should NOT have ATM access. Your fiduciary responsibility is to account for your clients' money. When you write a client trust bank account check, you create an audit trail that makes it easy to trace who the money came from and where it went. (See Key Concept 7, **Always Maintain an Audit Trail**, page 7.) A client trust bank account with ATM access makes it possible for you—or anyone who knows the account code—to withdraw your clients' money in cash, and it's very hard to account for cash. ATM withdrawals are an audit trail disaster. When you make an ATM withdrawal, the only record of what happened to the money is a little slip of paper that shows the date and the amount of the withdrawal; there's nothing that shows which client's money was withdrawn, who withdrew the money or who the money was paid to. This includes withdrawing your fees, since there's no indication of which client's fees you were paying. Even if you put all the descriptive information on an ATM receipt, it won't prove to your clients or a State Bar investigator what happened to the money.

Should NOT include automatic overdraft protection. "Automatic overdraft protection" means that whenever you write a check for more money than is in your account, the bank will automatically make you a personal loan to cover the difference and keep the check from bouncing. There are two reasons why this shouldn't be a feature of your client trust bank accounts. The first reason is that you should never have insufficient funds in your client trust bank account in the first place; if you do, you're in violation of your professional responsibilities. The second reason is that rule 4-100(A) states that you can't deposit your personal funds into your client trust bank account. If you have automatic overdraft protection on your client trust bank account, whenever you overdraw the account the bank will give you a personal loan to cover the difference. In effect, this means the bank is depositing your personal funds into your client trust bank account. (The same difficulties are also found in the so-called "instant credit" arrangements where the bank agrees to immediately credit accounts for deposits while the bank waits for the funds from another financial institution.)

If you write a client trust bank account check against an account that has insufficient funds to cover the check, regardless of whether you have overdraft protection, the State Bar will find out about it. Business and Professions Code section 6091.1 requires financial institutions to report these transactions to the State Bar. (See Appendix 2, page 47, for the text.) The statute also requires financial institutions to notify the State Bar when a client trust bank account check is written against an account that is closed.

By the time you hear from the State Bar, several weeks may have passed since you had the problem with your client trust bank account. Do not assume that your bank has or will provide an explanation to the State Bar. When an overdraft of a client trust bank account occurs, it is possible that your bank made an error or is aware of funds not yet credited to your account. The bank may owe you, their customer, an explanation, but it is your responsibility to provide an explanation to the State Bar.

A report to the State Bar pursuant to Business and Professions Code section 6091.1 doesn't automatically mean that you are being investigated by the State Bar. However, if you fail to provide the State Bar with a satisfactory explanation or if the problem occurs more than once, an investigation may result.

Remember, banks routinely charge for handling checks returned for insufficient funds, even if the bank pays them. The bank may also charge you for handling checks you deposit in your client trust bank account if the check is returned unpaid from the maker's bank. These charges should be handled like any other bank charges. (See **What MAY Go Into Your Client Trust Bank Account?** page 13.)

"IOLTA" Accounts

When a client gives you a "nominal" amount of money, or you will be holding a client's money for a "short period of time," Business and Professions Code section 6211 states that you must hold the money in a common client trust bank account which is set up so that the interest the account earns will be paid to the State Bar for the Legal Services Trust Fund Program.

Since most attorneys at some time hold money for clients that is "nominal in amount" or will be held for a "short period of time," the chances are that you will need to set up a common client trust bank account, which for convenience we've referred to as an "IOLTA" account. ("IOLTA" stands for Interest On Lawyers Trust Accounts.)

The idea behind the Legal Services Trust Fund Program is that attorneys often hold amounts of money for clients that are so small or will be held for such short periods of time that the interest the money could earn for the client if it were held in a separate interest-bearing account would be less than the costs involved in earning or accounting for the interest. However, when these amounts of money are held in a common client trust account, they collectively can generate substantial interest. The Legal Services Trust Fund Program requires that this aggregate interest, which would otherwise benefit only the bank, is used to ensure that poor Californians have access to legal services.

When you open an "IOLTA" account, tell the bank to send the interest to the State Bar. The State Bar must check to be sure that the bank sends the interest, so send a deposit slip or a voided blank check for the account with your bar membership number written on it to the Legal Services Trust Fund Program, State Bar of California, P.O. Box 193886, San Francisco, CA 94119-3886. (The fax number to the Legal Services Trust Fund Program is (415) 538-2529 and the e-mail address is trustfundprogram@calbar.ca.gov.) If you'll be sharing the account with other attorneys, like partners or associates, attach a list of the names and bar membership numbers of all the attorneys who'll be using the account to the deposit slip or voided check. The bank will code the account with the State Bar's taxpayer identification number (94-6001385) so you don't have to worry about paying tax on the interest. The bank automatically transmits the interest to the State Bar, and handles all the reporting requirements. An added benefit of IOLTA accounts is that the bank's regular monthly fee for keeping the account open is paid to the bank directly out of the interest the account earns. However, you are still responsible for paying check printing and other charges. (For a discussion of how to decide which client funds should be held in an IOLTA account, see **What MUST Be Held in Your IOLTA Account?** page 15.)

Know Your Bank

From the moment you make the first deposit into your client trust bank account, handling your clients' money means dealing with your bank. Every bank has different procedures; not knowing those procedures can hurt you and your clients. For every bank in which you maintain a client trust bank account, make sure you get the answers to the questions in Key Concept 4, Timing is Everything—what is your bank's schedule for clearing deposits, what is your bank's daily deadline for crediting deposits and what is your bank's daily deadline for paying checks drawn on it—and the following:

On what day of the month does the bank usually send out statements of account activity? Every bank sends out monthly statements that show what deposits have been credited to and what payments have been withdrawn from each account. Rule 4-100(C) requires you to do monthly reconciliations of your client trust bank accounts to make sure that your records match the bank's records. (See **Reconcile the Account Journal with the Bank Statement**, page 35.) If you know when you can expect to receive the bank statement, you can schedule a regular time every month to do this.

  Knowing when to expect your bank statement can also help you guard against theft by an associate or an employee. If someone is stealing from your client trust bank account, the bank statement should show it. An in-house thief may try to hide by concealing incriminating bank statements; if you're looking for the bank statement in the mail every month, the thief won't be able to hide for long.

What does your bank charge for and how much will you have to pay? As we've discussed, you need to know what bank charges to expect so that you can ensure that you or your clients always have money in the account to cover them. Ask your banker.

SECTION V: DEPOSITING MONEY INTO YOUR CLIENT TRUST BANK ACCOUNT

As far as your fiduciary responsibility toward your clients is concerned, there are only three kinds of money: money that MUST go into your client trust bank account; money that MAY go into your client trust bank account; and money that MUST NOT go into your client trust bank account.

What MUST Go into Your Client Trust Bank Account?

Rule 4-100(A) says you have to put "all funds received or held for the benefit of a client . . . including advances for costs and expenses" into your client trust bank account before you pay them out. The rule is that when you receive *any money* that your client has an interest in, it must be deposited into the client trust bank account and *cleared* before it can be paid out.

Money "received or held for the benefit of a client" includes:

- Money that belongs to the client outright (e.g., funds from the sale of the client's property);
- Money in which you and your client have a joint interest (e.g., settlement proceeds that include your contingency fee);
- Money in which your client and a third party have a joint interest (e.g., money you hold for a partnership of which your client is a partner or funds from the sale of community property); and
- Money that doesn't belong to your client at all but which you are holding as part of carrying out your representation of the client (e.g., when your client has commenced an action for interpleader).

You should note that this rule *doesn't* include non-refundable retainer fees taken not for services to be rendered but solely to ensure your availability to the client. Since these retainers are completely earned the moment you receive them, they are your money, not your clients', and therefore you should never deposit them into your client trust bank account. Sometimes your client will give you a single check that includes both a non-refundable retainer fee and money that you will hold for the client, like an advance against expenses. In this case, deposit the check into your client trust bank account and write yourself a check for the retainer fee portion as soon as the check clears and the money becomes available, leaving only the money for the expenses in the client trust bank account. Under these circumstances, it might be simpler to have the client write two checks; one for your non-refundable retainer and another for client expenses.

What MAY Go into Your Client Trust Bank Account?

There are only two kinds of money that *may* be deposited into your client trust bank account: money to cover bank charges, and advance fees. Everything else either *must* or *must not* be deposited into the account.

Bank charges. As we've mentioned, rule 4-100(A)(1) says you are allowed to deposit out of your own money "funds reasonably sufficient to pay bank charges." The rule *allows* you to keep your own money in the account to cover bank charges; it doesn't *require* you to. Some attorneys arrange with the bank to have those charges assessed against their general office accounts.

If you deposit your own money into your client trust bank accounts to cover the charges, you may be concerned about how much is "reasonably sufficient." That depends on the kind of bank charges you expect and how often you expect to incur them. Talk to your banker and get an estimate of what you will be charged.

As we've mentioned, the bank will automatically take the regular monthly service fee on an IOLTA account out of the interest the account earns. (In the event that the regular monthly service fee is greater than the interest the account earned that month, the bank will take the unpaid portion of the service fee from the interest earned on other IOLTA accounts held in the bank.) For IOLTA accounts, there are other kinds of bank charges you may incur, including charges for printing checks, for checks that are deposited in the account and returned for insufficient funds, for transferring money by wire, etc. You need to know what these charges are so you can make sure that you always have enough money in the account to cover them.

Remember that a deposit of your own money to cover bank charges, like every deposit you make to your client trust bank account, *must* be properly recorded in the account journal for your client trust bank account, and a special "bank charges" ledger. (See **What Records Do YOU Have to Create?**, page 19.)

Advance fees. An "advance fee" is money your client gives you upfront to pay the cost of legal representation. Unlike true retainers, which are paid to ensure your availability to a client and are therefore earned in full at the time you receive them, advance fees don't belong to you until you perform services for that client. If you don't perform all the services, you have to refund the unearned money. Therefore, while you aren't clearly *required* to, the simplest and safest thing to do is to hold advance fees in your client trust bank account and draw them out as you earn them. In fact, it would be a good idea for you to withdraw your fees on a regular basis, perhaps when you do your monthly reconciliation. (See **Reconciliation**, page 25.)

Although advanced fees are not required to be maintained in a client trust account, case law has recognized a duty to account for such fees. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756-758, the State Bar Court Review Department found that a lawyer violated rule 4-100(B)(3) requiring a lawyer "to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the [lawyer] or law firm and render appropriate accounts to the client regarding them . . . . ". In *Fonte*, the lawyer had taken a "minimum" fee payment from the client, allegedly paid solely to secure the lawyer's availability for the client's matter. The lawyer argued that he had no duty to account to the client because the minimum fee was a true retainer fee, earned upon receipt, and was not placed in the lawyer's client trust account. The lawyer argued that the duty to account found in rule 4-100(B)(3) applied only to fees placed in the lawyer's client trust account. The court disagreed, upholding the trial judge's finding that "minimum" fee paid for more than just the lawyer's availability and, therefore, was not a true retainer fee but simply an advance fee payment for service. The court then held that the lawyer had a duty to account for lawyer's fees taken out of the client's advance fee payment, regardless of the fact that such fees were not deposited in the lawyer's client trust account.

The lesson of *Fonte* is that, except in the case of a true retainer fee which is paid solely to secure the lawyer's availability and which is thereafter treated as such by the lawyer, lawyers have a duty to account to clients for advance fee payments, regardless of whether such fee payments are designated as "nonrefundable" in the attorney-client fee agreement or whether such fee payments are deposited in the lawyer's client trust account. While such duty to account may appear onerous to some lawyers, an accounting effectively protects a lawyer, allowing the lawyer to show what services were performed for the client and that the advance fees were in fact earned. A proper accounting can be the best defense against a client's claim, in a court action or fee arbitration, that a refund of advance fees is due to the client.

What MUST NOT Go into Your Client Trust Bank Account?

Rule 4-100(A) says that, other than bank charge money, "no funds that belong to the member or the law firm shall be deposited" into your client trust bank account. Unless one of your clients has an interest in the money, keep it out of your client trust bank account. NEVER put your personal or office money, including funds like employee payroll taxes, into your client trust bank account.

What MUST Be Held in Your IOLTA Account?

As we've mentioned, Business and Professions Code section 6211 requires you to keep amounts of money that are "nominal in amount" or "held for a short period of time" in your IOLTA account. Thus, you are required to make the practical determination of whether your clients' money must be held in your IOLTA account.

The constitutionality of California's Legal Services Trust Fund Program was upheld in *Carroll v. State Bar* (1985) 166 Cal.App.3d 1193 [213 Cal.Rptr. 305] (see generally, *Brown v. Legal Foundation of Washington* (March 26, 2003) __U.S. __, 123 S.Ct. 1406, 155 L.Ed.2d 376). In *Carroll*, the court suggested a convenient rule of thumb for determining whether client funds must be placed in the IOLTA account: your clients' money is "nominal in amount" or being held "for a short period of time" if the cost of opening and administering a separate, individual client trust bank account or otherwise accounting for the funds separately is greater than the amount of interest the money would earn for your client.

To help you make this determination, the following chart shows that if you're holding $5,000 for a client for 209 days—about seven months—that money will earn $50 in interest. (The chart assumes the current highest interest rate of 1¾%, compounded daily. Since interest rates change constantly, and most are now lower than this you shouldn't rely too heavily on this chart.) However, if your bank charges $8 a month to keep a separate account open, by the time your client earns $50, the bank will have charged your client about $56. Therefore, the $5,000 must be deposited into your IOLTA account because the actual transactional costs would prevent it from earning net income for your client.

Amount of Client Money You're Holding	Time Needed to Earn $50 Interest (At 1¾% Compounded Daily)
$5,000	209 days
10,000	106 days
15,000	71 days
20,000	54 days
25,000	43 days

What if the money you are holding is not "nominal in amount" or not being held for "a short period of time"? While you are not required to earn interest for the client, in no case are you allowed to keep the interest your clients' money earns. In light of the fact that the funds would generate interest income for the client if held in a separate interest-bearing account and you are in a fiduciary relationship with the client, you should ordinarily place the funds in an interest-bearing account for the benefit of the client. Tell the bank to code the account with your client's taxpayer identification number. In addition, make sure the type of account you choose doesn't limit access to your client's money in any way that will harm your client.

Your banker can help you figure out whether the amount of money a client has given you could generate net income for that client in a separate interest-bearing client trust bank account during the time you hold it, if you're having trouble deciding.

SECTION VI: PAYING MONEY OUT OF YOUR CLIENT TRUST BANK ACCOUNT

Before you write your first client trust bank account check, there are five things you should know.

What Payments CAN You Make?

You can make any payments **on behalf of your client** out of your client trust bank account, including paying client costs and expenses (e.g., court filing fees or deposition transcript costs), disbursing settlement proceeds, paying yourself earned and undisputed legal fees, etc. You may also pay bank charges for the account. Those are the *only* payments you're allowed to make out of your client trust bank account.

Bank charges. For individual client trust bank accounts, paying bank charges is simple: since all of the charges are incurred for the client for whom you have the account, you can pay the charges out of that client's money.

For common client trust bank accounts, paying bank charges is a little more complicated. When the bank charges for a service (e.g., for wiring money) for a specific client, you can treat the charge as you would any other cost and pay for it out of money you are holding for that client in the account. But some charges, like printing checks, aren't specific to a certain client. Like all your other general operating expenses, you—not your clients—have to pay these charges. That's why rule 4-100(A)(1) allows you to keep a little of your own money—an amount "reasonably sufficient to cover bank charges"—in your client trust bank account.

What Payments CAN'T You Make?

You *can't* make payments out of your client trust bank account to cover your own expenses, personal or business, or for any other purpose that isn't directly related to carrying out your duties to an individual client. You also can't pay money out of your client trust bank account on behalf of a client if the client doesn't have money available in the account to cover those payments. (See Key Concept 2, **You Can't Spend What You Don't Have**, page 5.)

You should also remember that you can't pay yourself legal fees that your client is disputing, whether or not you feel you've earned them. The moment a client disputes your fees, that money is frozen in your client trust bank account until the dispute is settled. If you have withdrawn fees that the client later disputes, you should redeposit the disputed funds into the client trust bank account until the dispute is resolved. When the amount of your fees is no longer in dispute, you have an ethical obligation to take those fees out of the client trust bank account as soon as you reasonably can.

How Should You Make Payments?

You should always pay out money from your client trust bank account by using a check, a wire transfer or another instrument that specifies who is getting the money and who is paying it out. You should never pay out money in cash, or with checks or other instruments made out to cash because you have no evidence of payment. (See Key Concept 7, **Always Maintain an Audit Trail,** page 7.) If you do make a payment in cash (or another instrument that doesn't give you a record of the transaction), you *must* get a receipt, or you have violated your professional responsibilities.

Some attorneys carry blank client trust bank account checks around to pay client expenses that come up when they're out of the office. Don't. This is a bad practice which results in checks being written out of numerical order (i.e., lower numbered checks being dated later

than higher numbered checks), and, more often than not, a few checks disappearing altogether. That can make it hard to keep orderly records and reconcile your books. If you're out of the office and a client expense comes up, pay it out of your general office account and, when you get back to the office, write a client trust bank account check to reimburse yourself.

Who Should Make Payments?

As we've discussed, your clients have entrusted *you* with their money, and you are personally accountable for it. Giving other people access to your clients' money is even riskier than giving them access to your own money. If your money is stolen because you trusted the wrong person, all you lose is the money. If your clients' money is stolen because you trusted your employees or your spouse to sign client trust bank account checks, you can lose your clients' money, your professional reputation and even your license to practice law. *Don't* make a signature block or stamp for your client trust bank account checks; *don't* pre-sign blank client trust bank account checks. If you do, sooner or later some of your clients' money will be missing, and whether the cause is dishonesty or incompetence, you will bear responsibility for both the financial loss and the violation of your fiduciary responsibility.

When Can You Make Payments?

As we've discussed, you can only pay out money from your client trust bank account when the client you're making the payment for has money to cover the payment in the account. (See Key Concept 2, **You Can't Spend What You Don't Have,** page 5 and Key Concept 4, **Timing Is Everything,** page 6.)

When MUST You Make Payments?

Rule 4-100(B)(4) says that you must "promptly pay . . . as requested by the client" money which the client is entitled to receive. This means that if your client asks you to return money you are holding in trust for that client, you must deliver that money promptly. Often, a client request for payment is triggered by notice from you that certain money has been received for the client, such as settlement proceeds. Rule 4-100(B)(1) requires that you "promptly notify a client" about the receipt of any client funds. What is meant by "promptly" for purposed of both notifying clients about funds received and making payment as requested by clients will depend upon the specific circumstances of each client's matter.

Attorney fees. As we've discussed, when you're holding client money that includes your undisputed fees, you have to take those fees out of the client trust bank account promptly after you've earned them.

Third party claims. You also may have a duty to promptly pay expenses due to a third party incurred on behalf of a client. In some cases, the client may dispute a third party's claim to the money. This situation most often arises in connection with a medical lien which the attorney and client have both signed. After the recovery is received, the client instructs you not to pay the doctor. Since you signed the lien, turning the funds over to the client may expose you to potential civil liability and may violate your fiduciary duty to the doctor. On the other hand, paying the doctor against the express instructions of the client also presents difficulties. You should consider writing to the client and the doctor to inform them of the problem, and your intention to hold the disputed funds in your client trust bank account until the dispute is resolved. If the parties cannot resolve their dispute, you should advise them of your intent to file an interpleader action. In no case should you use the disputed funds, which would constitute misappropriation.

SECTION VII: RECORDKEEPING

The next two sections will describe a simple, effective system for accounting for your clients' money. Whenever something in this section is mandatory, we'll cite the applicable rule, statute or case. Otherwise, we're giving you practice pointers, not law.

Rule of Professional Conduct 4-100(C) does not mandate any particular client trust accounting system. (However, keep in mind that an absence of records can subject you to discipline.) You can hire consultants to set up a system, buy computer accounting software—whatever works for you—as long as you get the results and keep the records that the rules require. If your client trust accounting system will accomplish what our client trust accounting system does, then it's probably alright. However, the system described below will give you everything you need to do in order to account for your clients' funds.

Our client trust accounting system is designed for sole practitioners and attorneys in small law firms. It assumes that you will be directly involved in every aspect of handling your clients' money. However, whatever size firm you work in and whatever client trust accounting system you use, you still have full personal fiduciary responsibility for accounting for your clients' money.

Keeping records is the way you do the "accounting" part of client trust accounting. Recordkeeping must be done consistently and keeping incomplete records is just as great a breach of your professional responsibility as keeping no records at all.

As we've discussed, rule 4-100(C) requires you to keep two kinds of records: records created by the *bank* that show what went into and out of your client trust bank accounts; and records created by *you* to explain the transactions reflected in the bank documents.

How Long Must You Keep Records?

Rule 4-100(C) requires you to keep trust accounting records for five years after you pay out the money the records refer to. To be on the safe side, you should keep the records of all money you handled for a client for a minimum of five years after you closed that client's case, unless they relate to a matter under disciplinary investigation. In that case, you *must* retain the records until the investigation is concluded as part of your duty under Bus. & Prof. Code sec. 6068(i) to cooperate and participate in a State Bar investigation.

Where Can You Keep Your Records?

If you have a practice involving a lot of clients, you have to hold on to a lot of paper. Since office space is limited and expensive, you may find it makes more sense to keep some client trust accounting records off-site rather than in your office. That's OK, as long as you can produce the records within a reasonable time after receiving notice that you're the subject of a disciplinary inquiry. If you keep orderly files, label each box with the names of the client trust bank accounts the records apply to and the dates covered by the records, and keep an index listing the names of all the boxes you send into storage, this won't be a problem. If you don't, you're going to have to retrieve all the boxes from storage and sort through all the records they contain in order to respond to the disciplinary inquiry. This can be expensive, time-consuming, and, if you have to request a time extension, can create the wrong impression.

What If You Have a Computerized System?

A computerized accounting system is acceptable. However, you should consider generating and keeping hard copies of all the records required by the rule (including bank-created records). You can use computer printouts instead of hand-written ledgers for the records you are responsible for creating, but just having the data on a disk is risky. (It's a good idea

to have these printouts dated and signed by the preparer to show when and by whom they were generated.)

If you're using a computerized accounting system, you should remember that computer data can be lost through natural disaster (like earthquake or fire), power or equipment failure and human error. For your own protection, make hard copies regularly and have all your computer records regularly backed up onto disks. In addition, if you use computerized records, remember that if the records are offered as evidence, they must be authenticated as business records pursuant to Evidence Code sections 1270-1272. (See Appendix 2, page 62 for the text for those sections and Evidence Code sections 1552 and 1553.)

Beyond preservation of the computer data, you also should be very careful when changing or upgrading your specific accounting software application, your overall computer operating system, and the computer hardware itself. Different software applications and newer versions of your same software application may not be fully compatible with the data generated by your current software application. Similarly, changing computers or operating systems can cause difficult compatibility problems. These days, it is not unusual for computer technology to advance dramatically in a five year time period, rendering some application data obsolete and problematic to use.

What Bank-Created Records Do You Have to Keep?

Rule 4-100(C) requires you to keep two kinds of bank-created records: client trust bank account statements and cancelled checks. Some attorneys don't take their duty to keep bank-created records seriously because they can always get copies from their bank. This is a clear violation of rule 4-100(C); it also isn't true. If your bank fails, merges with or is taken over by another bank, you may find that copies of your four-year-old cancelled client trust bank account checks just aren't available. As previously noted, finding a bank that still offers “cancelled checks” may take some searching and, if you’re unable to find such a bank, be sure to access and maintain “cancelled check” information by requesting check imaging or other documentation from your bank.

While it isn't required by the rule, you should also keep your client trust bank account deposit slips and checkbook stubs so you will have a complete audit trail. (See Key Concept 7, **Always Maintain an Audit Trail,** page 7.) These records will make it much easier to balance your books and to show what you did with your clients' money.

How Should You File Bank-Created Records?

To ensure that you have a complete set of bank-created records, and to save you time when you need to find a particular record, you should have a simple, consistent filing system. One good system is to keep separate binders for each of your client trust bank accounts. Each binder should have one section for bank statements, one section for cancelled checks, one section for deposit slips and one section for checkbook stubs. File each record in date order in the appropriate section of the binder for the account they refer to. Just label each binder with the name of the client trust bank account and the period it covers, and you should be able to find any record in one or two minutes.

What Records Do YOU Have to Create?

As we've discussed, rule 4-100(C) requires you to create three kinds of records to show that you know at all times what you're doing with your clients' money. We'll discuss each of these records in detail below, but a few general points apply to all of them:

- # Like bank-created records, rule 4-100(C) requires you to retain these records for a minimum of five years after you pay out the money the records refer to.

- Never round off figures in these records. Rule 4-100(C) says that you must record "all funds received on behalf of a client." That means all receipts and payments must be recorded to the penny.

- These records can be handwritten, typed or printed out from a computer file. However, they should be complete, neat and legible, and stored in such a way that you can find them—and read them—as many as five years later. Handwritten records should be kept *in ink*—not pencil or magic marker—in bound accounting books, and typed records or computer printouts should be filed in binders. As with bank-created records, you can save yourself time and trouble by labeling the covers of the books and binders with complete account or client names and the dates the records cover.

- All deposits and payments should be recorded to the account journal and client ledger within 24 hours. Waiting longer increases the chance that you will forget to record a transaction or will record it wrong. It also means that your records aren't up-to-date, and that you might be spending money your clients don't have. (See Key Concept 5, **You Can't Play the Game Unless You Know the Score,** page 7.)

The client ledger. Rule 4-100(C) says you must keep a "written ledger" for each client whose money you hold. This client ledger must give the name of the client, detail all money you receive and pay out on behalf of the client, and show the client's balance following every receipt or payment.

Maintaining a client ledger is like keeping a separate checkbook for each client, regardless of whether or not the client's money is being held in your common client trust bank account. (See Key Concept 1, **Separate Clients Are Separate Accounts,** page 5.) The only difference between properly maintaining a client ledger and properly maintaining your personal checkbook is that you can be disciplined if you fail to properly maintain your client ledger.

Every receipt and payment of money for a client must be recorded in that client's client ledger. For every receipt, you must list the date, amount and source of the money. For every payment, you must list the date, the amount, the payee (who the payment went to) and purpose of the payment. After you record each receipt, you must add the amount to the client's old balance and write in the new total. After you record each payment, you must subtract the amount from the client's old balance and write in the new total. Leave a number of blank lines after the last entry of each month, so that you can make additional entries during the monthly reconciliation process.

When you deposit more than one check at a time for a client (i.e., using one deposit slip for all the checks), you should record each check as a separate deposit in your account journal. If you don't, it will be harder to reconcile your books and to answer any questions that may come up later.

You will find it much easier to keep your records straight if you don't put more than one client's records on a given page. Also, you shouldn't use the front of a page for one client and the back of the page for another. This means wasting some paper, but it will enable you to file all the client ledger pages that refer to a given client in chronological order and find those pages faster if you need them. If you're handling more than one case for the same client, it may be helpful to maintain a separate client ledger for each matter. If you don't, make sure that it's clear to which case the transaction is related when you record your client's receipts and payments.

Let's go through the motions of opening and maintaining a client ledger for a new client, KB. At your first meeting, on Thursday, July 9, KB gives you a check for $1,500 as an advance against costs and expenses. The first question is whether you should open an individual client trust bank account for KB, where it will earn interest for her, or deposit

this money into your IOLTA account, where it will earn interest for the Legal Services Trust Fund Program. When you apply the requirements of Business and Professions Code section 6211, you decide that the $1,500 couldn't earn interest for KB after costs are deducted. (See **What MUST Be Held in Your IOLTA Account?**, page 15.) Therefore, you deposit KB's money into your IOLTA account and create a new client ledger for her, starting on the front of an unused page in the book you use for client ledgers. The new client ledger looks like this:

CLIENT LEDGER
CLIENT: KB
CASE #: 920137

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	KB			1,500.00	1,500.00

As rule 4-100(C) requires, you've recorded the date you received KB's money, who the money came from, the amount of money and the balance you're holding for KB. Notice that the “Payee, # & Purpose” and “Checks (Subtract)” columns are left blank, since they are only used when you are recording a payment out of the account.

The first thing KB needs is a private investigator to locate witnesses for her case. Since you know that your bank won't clear KB's check (which is drawn on an out-of-town bank) until the third working day after the deposit, you wait until then to hire one. (If the matter required immediate attention, you could have paid the private investigator with a check drawn on your general office account, and then reimbursed yourself for the expense after KB's check had cleared.)

On Tuesday, July 14, when the check has cleared, you look up KB's balance to make sure she has enough money in the account (you can't keep every client's balance in your head) and then make out a client trust bank account check, #437, for $500 to FS, a private investigator. You record the payment in KB's client ledger, subtract the amount of the check from her running balance and write in the new balance. KB's client ledger now looks like this:

CLIENT LEDGER
CLIENT: KB
CASE #: 920137

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	KB			1,500.00	1,500.00
7/14/92		FS, #437 Investigation	500.00		1,000.00

As rule 4-100(C) requires, you've recorded the date you paid out KB's money, who you paid the money out to, why you spent the money, the amount of money you spent and the balance you're holding for KB. You also recorded the number of the check you wrote, to make it easier to reconcile your records at the end of the month. Notice that the “Source of Deposit” and “Deposits (Add)” columns were left blank, since they are only used when you are recording a deposit to the account. Also notice that you didn't round off; you recorded the amount of the payment to “FS” and the new balance to the penny.

During the next couple of weeks, you receive two more checks from KB and (after checking KB's balance) make one additional payment to cover court costs. Following the procedure above, you record these transactions in KB's client ledger. When KB calls you

at 5:30 p.m. on Friday, July 24, to ask how much you're still holding for her, you are able to tell her immediately, even though your secretary has already gone home. When KB's case is closed at the end of the month, per your written fee agreement, you pay yourself your legal fees. At the time you close the matter, KB's client ledger looks like this:

CLIENT LEDGER
CLIENT: KB
CASE #: 920137

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	KB			1,500.00	1,500.00
7/14/92		FS, #437 Investigation	500.00		1,000.00
7/15/92	KB			325.00	1,325.00
7/15/92		SF Muni Court, #446 Filing Fee	50.00		1,275.00
7/19/92	KB			225.00	1,500.00
8/01/92		Self, #448 Legal fee	1,500.00		0

If KB questions your fees, or if a State Bar investigator asks you to explain what you did with KB's money, this client ledger gives you a complete, clear record to account for the funds you held in trust. In the course of keeping this client ledger, you've completely fulfilled the client ledger requirements of rule 4-100(C). You've also fulfilled six of the seven key concepts. You've kept KB's money separate from all your other clients', even though it's being held in your common client trust bank account (Key Concept 1, **Separate Clients Are Separate Accounts,** page 5); you haven't spent more money than KB had and have thus avoided a "negative balance" (Key Concept 2, **You Can't Spend What You Don't Have,** page 5, and Key Concept 3, **There's No Such Thing as a "Negative Balance,"** page 5); you waited until KB's check cleared before paying out any of the money (Key Concept 4, **Timing Is Everything,** page 6); you've been able to tell at all times exactly how much of KB's money you're holding (Key Concept 5, **You Can't Play the Game Unless You Know the Score,** page 7); and you've zeroed out KB's balance (Key Concept 6, **The Final Score Is Always Zero,** page 7).

The account journal. Rule 4-100(C) says you must keep a "written journal" for each client trust bank account. This account journal must give the name of the bank account, detail all money you receive and pay out, say which clients you received or paid out the money for, and give the account balance after every receipt or payment.

Maintaining an account journal is very similar to keeping a client ledger. In fact, for your individual client trust bank accounts (i.e., accounts in which you keep only one client's money), you only need to keep the client ledger in order to comply with rule 4-100(C). But for your common client trust bank account, keeping the account journal is the only way you can know how much you have in the account at any given time. If you maintain the account journal properly, you will never bounce a client trust bank account check unless there's been a bank error.

In the account journal, you must record every deposit into and payment out of the client trust bank account. For every deposit, you must record the name of the client you received the money for, the date you deposited the money, and the amount of money you deposited. After you record each deposit, you have to add the amount to the account's old balance and write in the new total. For every payment, you must list the client for whom you paid

out the money, the date and the amount of the payment. Although it's not required by the rule, you will find it a lot easier to balance your books if you also record the number of the check and the payee or source of the money. After you record each payment, you have to subtract the amount from the account's old balance and write in the new total. As with the client ledger, leave a number of lines blank after the last entry of each month, so that you can make additional entries during the monthly reconciliation process.

When you deposit more than one check at a time (i.e., using one deposit slip for all the checks), you *must* record each check as a separate deposit in your account journal. If you don't, you won't be able to indicate how much was deposited for each client, thus you won't be in compliance with rule 4-100(C).

If you are keeping your own money in the account to cover bank charges, you must also record every deposit of your own funds and every bank charge. In the account journals for interest-bearing client trust bank accounts, you must also record any interest the bank credits to or charges the bank takes from the account.

Let's look at an example of an account journal for a common client trust bank account. To show you how the account journal relates to the client ledger, we'll look at the account journal page for the day you deposited KB's first check, July 9, 1992:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	DS		FB, #423 Prof. fee	1,800.00		13,000.00
7/09/92	KB	KB			1,500.00	14,500.00
7/09/92	GC	Ins. Co.			3,500.00	18,000.00
7/09/92	DC		DC #424 Settlement proceeds	6,500.00		11,500.00

As you can see, at the time you deposited KB's first check, there was already a substantial amount of money in the account that belonged to other clients. The account journal *doesn't* show you how much of this money belonged to each client. To find that out, you have to look in the client ledgers for those clients. What the account journal *does* tell you is how much, to the penny, was in your common client trust bank account at any given time.

As rule 4-100(C) requires, for each transaction you've recorded the date you received or paid out the money, which client you received or paid out the money for, how much you received or paid out and what your client trust bank account balance was after each deposit or payment. As with the client ledger, you've recorded who the money came from (in the "Source of Deposit" column), who the money went to, why you paid out the money and the number of the client trust bank account check you used to make each payment (in the "Payee, # and Purpose" column). You recorded the amount of each deposit in the "Deposits (Add)" column, the amount of each payment in the "Checks (Subtract)" column, and, after adding in each deposit and subtracting each payment, you recorded a new running balance in the "Balance" column.

Bank charges ledger. Rule 4-100(C) requires you to record every bank charge against your client trust bank account in the account journal and permits you to keep your own money in your common client trust bank account to pay these bank charges. If you keep your own money in the client trust bank account to pay these charges, you should create a separate ledger where this money, and all the bank charges you pay with it, are recorded. We'll call this the "bank charges ledger." You should keep the bank charges ledger the

same way you keep your client ledgers, recording every deposit, every charge the bank makes against the account, and the running balance of money you have left to cover the charges.

The bank charges ledger should look like this:

BANK CHARGES LEDGER
CLIENT: Bank Charges
CASE #: N/A

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
6/30/92	CORRECTED MONTH ENDING BALANCE				50.00
7/01/92	Self			100.00	150.00
7/31/92		Check printing	10.00		140.00

What Records Do You Have to Keep of Other Properties?

Rule 4-100 requires you to keep a written journal of all securities and other properties you hold in trust for clients that explains what you were holding, who you were holding it for, when you received it, when you distributed it, and who you distributed it to. You have to maintain this written record, which we'll call the other properties journal, from the day you receive the properties until five years after the day you disburse them. (Naturally, if these properties become the subject of a disciplinary investigation, you have to keep the records until the investigation is completed.) As with the other records we've discussed, it's prudent to retain these records for five years after you closed the matter of the client for whom you held the other properties.

While you can keep a separate other properties journal for each client, the simplest thing to do is maintain a single journal in which you record all other properties. Here's a sample of such a journal:

OTHER PROPERTIES JOURNAL

CLIENT/ CASE #	ITEM	DATE RECEIVED	DATE DISBURSED	DISBURSED TO
KB/920137	Emerald brooch	7/09/92	8/01/92	KB
DS/920123	AT&T stock	7/16/92		
GC/920125	Red Porsche	8/07/92	8/15/92	GC

Rule 4-100(B)(2) requires you to actually label the properties to identify the owner (i.e., put a tag on them with the owner's name) and put them into a “safe deposit box or other place of safe keeping as soon as practicable.” In this case, a safe deposit box is fine for the brooch and the stock certificates, but you'll need to find a secured garage or similar “place of safekeeping” for the Porsche.

As rule 4-100(C) requires, the sample journal lists the client you're holding the properties for, what properties you're holding for the client, when you received the properties, when you disbursed them, and who you disbursed them to. If you're holding many properties for a single client, you may want to keep a separate other properties journal for that client; otherwise, a single journal like the one shown above is sufficient.

SECTION VIII: RECONCILIATION

Rule 4-100(C) requires you to keep records of your "monthly reconciliation (balancing)" of your client ledgers, account journals and bank statements. "Reconciliation" means checking the three basic records you are required to keep—the bank statements, the client ledgers, and the account journal—against each other so you can find and correct any mistakes.

Rule 4-100(C) requires you to reconcile your client trust bank account records because mistakes always happen when people keep track of money. Even banks make mistakes when it comes to recording money transactions. That's because when you're working with numbers, mistakes are easy to make and difficult to notice. No amount of training can eliminate these mistakes.

To make sure that you find and correct these mistakes, rule 4-100(C) requires that you record every client trust bank account transaction twice (in your client ledger and your account journal), check these records against each other and against the bank's records. For example, let's say you deposit a check for $1,000 into your common client trust bank account but mistakenly record it as "$10,000" in your client ledger and add $10,000 to your client's running balance. In your account journal, you record the check correctly and add $1,000 to your client trust bank account's running balance. How will you find the mistake? The account journal balance is right, so you won't find the mistake by bouncing a check. The numbers in the client ledger all add up—there's no way to tell you made a mistake. Unless you compare your client ledger balance to your account journal balance, you won't be able to find the recording error. And unless you compare your client ledger and account journal against the bank statement, you won't know which entry was right—$10,000 or $1,000.

We've just described the reconciliation process. The theory is that it's unlikely that the same mistakes will be made in three different records—the client ledgers, the account journal and the bank statement—so if those records are all checked against each other, any mistakes will show up.

Rule 4-100(C) requires that your client trust bank account records be reconciled every month and that you create a written record that shows you went through the reconciliation process. It's alright to hire a bookkeeper or the equivalent, but you are still personally responsible for accounting to your clients and to the State Bar for the money in your client trust bank accounts. Therefore, even if you never intend to do the reconciling, you should understand the process. Even if it's your bookkeeper's mistake, if you bounce a client trust bank account check, you're the one your client or the State Bar is going to come to for an explanation.

You can't do a reconciliation for one month until you're sure you have correct balances in all your client ledgers and account journals for the previous month. If you haven't recently reconciled your books, or if you are worried that they're wrong, you may want to bring in a bookkeeper to straighten them out before you take on the monthly reconciliations yourself. Once you have correct balances for the previous month, you are ready to reconcile.

There are four main steps in reconciling your books:

1. Reconciling the account journal with the client ledgers to make sure they agree with one another.

2. Entering bank charges and interest shown on the bank statement into your account journal and client ledgers as appropriate.

3. Reconciling the account journal and client ledgers with the bank statement to make sure that your records agree with the bank's.

4. Entering Corrected Month Ending Balances and Corrected Current Running Balances into your account journal and client ledgers.

As you can see, the third step of the reconciliation process is comparing your monthly bank statement with the account records you've created. A bank statement is a list of all the withdrawals, deposits, charges and interest that the bank has credited to your account during the month. (For IOLTA accounts, the bank statement may also show interest paid to the State Bar, and amounts charged to the State Bar, which should not be entered into your account journal.) It takes some banks several weeks to prepare and mail out statements for the previous month; that means you may be reconciling your books as much as three or four weeks after the month you are reconciling. (In the example that follows, you are reconciling your records for July on August 22.) Also, as we've discussed, it can take days or weeks for checks to be presented for payment. These delays mean that you can't just compare the balance in your account journal to the balance shown on the bank statement to see if anything is wrong. You have to "adjust" your account balance by backing out all the transactions that weren't debited or credited by the time the bank statement was prepared. This adjustment process may seem complicated, but if you carefully follow the instructions for filling out the forms below, you shouldn't have any problems.

The goal of the reconciliation process is to figure out the Corrected Month Ending Balance for the month you are reconciling (that is, the amount of money that was actually in the account on the last day of the month) and the Corrected Current Running Balance as of the date you complete the reconciliation (that is, the amount of money that is actually in the account now) by entering interest, bank charges and mistake corrections into your account journal and client ledgers. (You'll put these entries in the space you left after the last entry of the month so that you could add entries during the reconciliation process.) Since you can't be sure you've found every mistake until you've finished reconciling, you can't enter a Corrected Month Ending Balance or a Corrected Current Running Balance into your account journal and client ledgers until you've finished the reconciliation process.

The following is a recommended three-form system that makes reconciliation simple. Remember that each of the three forms—the Client Ledger Balance form, the Adjustments to Month Ending Balance form, and the Reconciliation form—should be filled out *every month* for *every* client trust bank account.

When filling out these forms, it's a good idea to use an adding machine or other calculator that will produce a printed record of the calculation you performed. That way, if your records don't match, you can easily check to see if the reason is a mathematical mistake made while preparing the form.

Reconcile the Account Journal with the Client Ledgers

The first step in reconciliation is to reconcile the account journal with the client ledgers. The purpose of this step is to make sure that the entries in your client ledgers agree with the entries in your account journal. Here's an example:

FORM ONE

CLIENT LEDGER BALANCE

RECONCILIATION DATE: 8/22/92

CLIENT TRUST BANK ACCOUNT NAME: COMMON CLIENT TRUST BANK ACCOUNT

PERIOD COVERED BY BANK STATEMENT: 7/1/92 TO 7/31/92

CLIENT	CLIENT LEDGER BALANCE
KB	1,500.00
DC	200.00
GC	8,500.00
DS	250.00
Bank charges	125.00

TOTAL CLIENT LEDGER BALANCE:	10,575.00
MONTH ENDING ACCOUNT JOURNAL BALANCE:	10,575.00
TOTAL MISTAKE CORRECTION ENTRIES (+ or -): $____ (From Form Two)	
ADJUSTED MONTH ENDING ACCOUNT JOURNAL BALANCE:	

In the space after "Reconciliation Date," write the day, month and year you are doing the reconciliation; in the space after "Client Trust Bank Account Name," write the name of the client trust bank account (e.g., "Common Client Trust Bank Account"); in the space after "Period Covered by Bank Statement," write the dates of the period covered by your most recent bank statement (e.g., 7/1/92 to 7/31/92, if you are doing your July 1992 reconciliation).

On the lines under "Client," write the name of each client whose money you are holding in the client trust bank account. On the lines under "Client Ledger Balance," write the running balance as of the last day covered by the bank statement (in this case, July 31, 1992) from each client ledger next to the name of that client. (For your common client trust bank account, this may require more lines than shown here. For an individual client trust bank account, you will only need the first line.) Add up the client ledger balances in the "Client Ledger Balance" column and write in the total after "Total Client Ledger Balance." Even if only one client's money is in the client trust bank account, you have to write that client's balance on this line. In the space after "Month Ending Account Journal Balance," write in the running balance for the client trust bank account as of the last day covered by the bank statement.

Notice that the "Total Client Ledger Balance" exactly matches the "Month Ending Account Journal Balance." That means that your client ledger balance entries for the month agree with your account journal entries, and you're ready to move on to the next step of the reconciliation process. For the moment, leave the last two lines, "Total Mistake Correction Entries (+ or -)" and "Adjusted Month Ending Balance," blank; you might find mistakes during the rest of the reconciliation process.

When the "Total Client Ledger Balance" *doesn't* exactly match the "Month Ending Account Journal Balance," don't panic; you've found a mistake, and that's what reconciliation is for. You can call in a bookkeeper to help you, or make the correction yourself (see **Finding and correcting mistakes**, below). When you've found and corrected the mistake, move on to step 2.

Finding and correcting mistakes. What do you do if you add up all your client ledger balances and the total *doesn't* match the month ending account journal balance?

Since rule 4-100(C) requires you to record every deposit and withdrawal twice, if you systematically compare each entry in the account journal with the corresponding entry in

the client ledger, and check the new balance you entered after each entry, you will always find the mistake.

For example, let's say that the sample form shown above had looked like this:

FORM ONE

CLIENT LEDGER BALANCE

RECONCILIATION DATE: 8/22/92

CLIENT TRUST BANK ACCOUNT NAME: COMMON CLIENT TRUST BANK ACCOUNT

PERIOD COVERED BY BANK STATEMENT: 7/1/92 TO 7/31/92

CLIENT	CLIENT LEDGER BALANCE
KB	1,500.00
DC	200.00
GC	8,500.00
DS	250.00
Bank charges	125.00

TOTAL CLIENT LEDGER BALANCE: 10,575.00
MONTH ENDING ACCOUNT JOURNAL BALANCE: 10,550.00
TOTAL MISTAKE CORRECTION ENTRIES (+ or -): $____
(From Form Two)
ADJUSTED MONTH ENDING ACCOUNT JOURNAL BALANCE: _____

The Total Client Ledger Balance and Month Ending Account Journal Balance differ by $25.00. This difference could be the result of a single mistake, or of several mistakes; it could be in a client ledger, the account journal, or both. It could be that you forgot to record a deposit or withdrawal, or that you recorded the amounts incorrectly; or it could be the result of incorrectly adding a deposit or subtracting a withdrawal.

You open your account journal to the page that shows the corrected month ending balance for the previous month and the first entries for the month you are reconciling, which looks like this:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
6/30/92	CORRECTED MONTH ENDING BALANCE					9,500.00
7/01/92	DS		FB, #408 Prof. fees	500.00		9,000.00
7/01/92	GC		Self, #409 Atty fees	1,500.00		7,500.00
7/01/92	DC	DC			2,000.00	9,500.00
7/02/92	DS	DS			1,000.00	10,500.00

Since you reconciled this account last month, you know that the corrected month ending balance shown for June 30, 1992, is right, and agrees with the total client ledger balance for that date; whatever is causing the $25.00 difference between the account journal balance and the total client ledger balance must have happened since then. Therefore, you look at the first entry for July 1, 1992, check #408 which you wrote for DS to FB for $500, which gave you a new running balance of $9,000.00. You make sure that you correctly subtracted

$500 from the 6/30/92 corrected month ending balance to get this new running balance, then open DS's client ledger to the page where you recorded check #408:

CLIENT LEDGER
CLIENT: DS
CASE #: 920123

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
6/30/92	CORRECTED MONTH ENDING BALANCE				600.00
7/01/92		FB, #408 Prof. fee	**500.00**		100.00
7/02/92	DS			1,800.00	1,900.00

You compare the entry in the client ledger with the entry in the account journal; they are both for the same check and the same amount. You subtract the amount of the check—$500—from the client ledger's 6/30/92 corrected month ending balance of $600.00, and see that the new running balance of $100.00 you entered was right. You have now determined that the $25.00 difference you are trying to correct wasn't caused by recording the check to FB, and that the balances in the account journal and in this client ledger after you wrote this check are right.

You put a light pencil mark (shown as an asterisk) next to these balances and repeat this process with each entry in the account journal. Everything is right until you get to the deposit of $3,550.00 on July 9, 1992 for GC:

ACCOUNT JOURNAL
CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	DS		FB, #423 Prof. fee	1,800.00		13,000.00*
7/09/92	KB	KB			1,500.00	14,500.00*
7/09/92	GC	**Ins. Co.**			**3,500.00**	**18,000.00**
7/09/02	DC		DC, #424 Settlement proceeds	6,500.00		11,500.00

Notice the asterisks you put next to each balance that you have already verified. You add the $3,500.00 to the last verified balance, and see that the new running balance of $18,000.00 you entered was right. You open GC's client ledger to the page where you recorded this deposit:

CLIENT LEDGER
CLIENT: GC
CASE #: 920125

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
6/30/92	CORRECTED MONTH ENDING BALANCE				13,000.00
7/01/92		Self, #409 Atty fees	1,500.00		11,500.00*
7/09/92	**Ins. Co.**			**3,525.00**	**15,025.00**

You compare the entry in the client ledger with the entry in the account journal; the deposit was recorded, but the amount of the deposit is $3,**525.00**, not $3,**500.00**. You subtract one amount from another and find that the difference is exactly $25.00. You add $3,525.00 to the previous client ledger balance and verify that the new running balance is right. That means the mistake was made by entering the amount of the deposit incorrectly; but which entry is wrong, the account journal entry or the client ledger entry?

To find out, you can compare the account journal and client ledger entries to the deposit slip, which you filed in the appropriate binder, or to your most recent bank statement. The bank statement shows one deposit on 7/9/92 of $5,025.00, which doesn't match either number. But your account journal shows that you made two deposits on July 9:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/09/92	DS		FB, #423 Prof. fee	1,800.00		13,000.00*
7/09/92	KB	**KB**			**1,500.00**	**14,500.00***
7/09/92	GC	**Ins. Co.**			**3,500.00**	**18,000.00**
7/09/02	DC		DC, #424 Settlement proceeds	6,500.00		11,500.00

Since the bank statement shows only one deposit for July 9, 1992, that means you deposited both checks on the same deposit slip. You add these two deposits together, and get $5,**000.00**, not $5,**025.00,** as the bank statement shows. You subtract the smaller amount from the larger amount, and get $25.00, the exact difference you're looking for. That means that the entry in the account journal—$3,**500.00**—is wrong, and the entry in the client ledger, $3,**525.00** is right. (If you'd kept a copy of the deposit slip you filled out on July 9, which listed the two deposits separately, you could have found the mistake without doing the math.)

Now that you've found the mistake, you need to correct it so that your account journal reflects the right amount of the July 9, 1992 deposit. Since you keep your records in ink, not in pencil, you can't just erase and write in the correct deposit amount and balance. You don't want to scratch out the incorrect amount and write in the new one. This is messy, and it means you'll have to scratch out all the running balances from the July 9 deposit on; they were all based on the mistaken entry, and they are all wrong. The easiest—and clearest—way to correct the mistake is to mark the wrong entry (you can use any prominent notation that doesn't make it hard to read the entry), make a mistake correction entry using the lines you left blank for entering the Corrected Month Ending Balance, and make the same mistake correction entry after your most recent entry to correct your current running balance. (Since the mistake was in the account journal, not the client ledger, you don't have to make any mistake corrections entries there.) This means that you have to record the correction twice; at the end of the month in which you made the mistake, so that it's included in the Corrected Month Ending Balance, and after your last entry, so that it's included in the Corrected Current Running Balance. In this example, the mistake correction entry for the Corrected Month Ending Balance would look like this:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/31/92	DS		FB, #447 Prof. fee	250.00		8,000.00
7/31/92	DC	JA			2,500.00	10,500.00
7/09/92	**ERROR**	**- backing out wrong deposit - adding in correct deposit**		**3,500.00**	**3,525.00**	
7/31/92	CORRECTED MONTH ENDING BALANCE					
8/01/92	KB		Self, #448 Attorney fees	1,500.00		9,000.00

To show that you've backed out the wrong amount and inserted the correct amount, the mistake correction entry shows that you have *subtracted* the wrong amount from the account balance, and *added* the right amount to the account balance. (If you make a mistake in recording a withdrawal, you do the same thing.) You could have corrected the mistake with a mistake correction entry that just added the missing $25.00; however, that entry wouldn't tell you what the mistake was, or help you track it down if any questions come up in the future. Notice that you haven't filled in the Corrected Month Ending Balance yet; you won't do that until you complete all the steps in the reconciliation process. Now let's look at the mistake correction entry that corrects the account's current running balance:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
8/21/92	Bank chg.	Self			100.00	11,500.00
8/22/92	DS		FB, #447 Prof. fee	1,000.00		10,500.00
8/22/92	DC	DC			6,500.00	17,000.00
7/09/92	**ERROR**	**- backing out wrong deposit - adding in correct deposit**		**3,500.00**	**3,525.00**	

This entry ensures that when you enter the Corrected Current Running Balance at the end of the reconciliation process, it will reflect the correct deposit, instead of the mistake.

Now that you've corrected the mistake and the account journal entries agree with the client ledger entries, go back to Form One and fill out the last two lines with the total of the mistake correction entries you made and the Adjusted Month Ending Account Balance:

FORM ONE

CLIENT LEDGER BALANCE

RECONCILIATION DATE:	8/22/92
CLIENT TRUST BANK ACCOUNT NAME:	COMMON CLIENT TRUST BANK ACCOUNT
PERIOD COVERED BY BANK STATEMENT:	7/1/92 TO 7/31/92

CLIENT	CLIENT LEDGER BALANCE
KB	1,500.00
DC	200.00
GC	8,500.00
DS	250.00
Bank charges	125.00

TOTAL CLIENT LEDGER BALANCE:	10,575.00
MONTH ENDING ACCOUNT JOURNAL BALANCE:	10,550.00
TOTAL MISTAKE CORRECTION ENTRIES (+ or -): $ 25.00 (From Form Two)	
ADJUSTED MONTH ENDING ACCOUNT JOURNAL BALANCE:	**10,575.00**

When we get to step 3, we'll record these mistake correction entries, and any others we have to make, on Form Two, "Adjustments to Month Ending Balance."

What if the mistake had been in the entry in GC's client ledger instead of in the account journal entry? In that case, you would put mistake correction entries in the client ledger the same way you would in the account journal, once in the space above the Corrected Month Ending Balance and once after the most recent entry. However, on Form One, instead of recording the mistake on the "Total Mistake Correction Entries (+ or -)" line, you would simply cross out the incorrect client ledger balance for GC and write the correct balance beside it. Since GC's balance was wrong, the Total Client Ledger Balance you recorded is wrong. Cross it out and write in the correct total; it should exactly match the Month Ending Account Journal Balance. Put a zero on the "Total Mistake Correction Entries (+ or -)" line; this line is only for recording mistakes in the account journal, not for mistakes in client ledgers. Fill in the "Adjusted Month Ending Account Journal Balance" line. When you're done, Form One should look like this:

FORM ONE

CLIENT LEDGER BALANCE

RECONCILIATION DATE:	8/22/92
CLIENT TRUST BANK ACCOUNT NAME:	COMMON CLIENT TRUST BANK ACCOUNT
PERIOD COVERED BY BANK STATEMENT:	7/1/92 TO 7/31/92

CLIENT	CLIENT LEDGER BALANCE	
KB	1,500.00	
DC	200.00	
GC	~~8,525.00~~	8,500.00
DS	250.00	
Bank charges	125.00	

	10,550.00
TOTAL CLIENT LEDGER BALANCE:	**~~$10,575.00~~**
MONTH ENDING ACCOUNT JOURNAL BALANCE:	**10,550.00**
TOTAL MISTAKE CORRECTION ENTRIES (+ or -): $ 0.00 (From Form Two)	
ADJUSTED MONTH ENDING ACCOUNT JOURNAL BALANCE:	**10,550.00**

Enter Bank Charges and Interest

The purpose of this step is to make sure that bank charges and interest credits reflected on the bank statement are also reflected in your records. Since you don't know what these bank charges or interest credits are until you receive the bank statement, you need to enter them into your records after you receive the bank statement.

All bank charges must be recorded in the account journal. If a bank charge was incurred on behalf of a specific client (as, for example, a charge for wiring money to a client), the charge must **also** be entered in that client's client ledger. (This ensures that the account journal balance will continue to match the total of the individual client ledger balances.) If the charge was not for a specific client (for example, a charge for printing common client trust bank account checks), the charge must **also** be entered in the bank charges ledger.

Since all interest earned on money held in an individual interest-bearing client trust bank account belongs to the client, interest must always be entered in the account journal *and* the client ledgers. (Since the interest on IOLTA accounts is transmitted by the bank to the State Bar, it shouldn't be entered into your records.)

Like mistake correction entries, bank charge and interest entries must be recorded twice; at the end of the month in which the transaction occurred, so that they are included in the Corrected Month Ending Balance, and after your last entry, so that they are included in the Corrected Current Running Balance.

This example will deal with an IOLTA account which pays interest to the State Bar. (Remember, interest which is paid to the State Bar should not be entered in your account journal.) In the account journal for our sample common client trust bank account, the bank charges (other than the regular service charges to the State Bar) for July are entered twice, once in the space above the Corrected Month Ending Balance:

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/31/92	DS		FB, #447 Prof. fee	250.00		8,000.00
7/31/92	DC	JA			2,500.00	10,500.00
7/09/92	ERROR	- backing out wrong deposit - adding in correct deposit		3,500.00	3,525.00	
7/31/92	**BANK CHARGE**	**- new checks** **- wire for DS**		**10.00** **15.00**		
7/31/92	CORRECTED MONTH ENDING BALANCE					
8/01/92	KB		Self, #448 Atty's fees	1,500.00		9,000.00

And once after the most recent entry:

ACCOUNT JOURNAL
CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
8/21/92	Bank chg.	Self			100.00	11,500.00
8/22/92	DS		FB, #457 Prof. fee	1,000.00		10,500.00
8/22/92	DC	DC			6,500.00	17,000.00
7/09/92	ERROR	- backing out wrong deposit - adding in correct deposit		3,500.00	 3,525.00	13,500.00 17,025.00
7/31/92	**BANK CHARGE**	**- new checks - wire for DS**		**10.00 15.00**		

As you can see, there were two bank charges during July; one for printing new checks, which is not specific to an individual client and must be recorded in the bank charges ledger; and one for sending money by wire for DS, which is specific to an individual client and must be recorded in DS's client ledger. (Notice that we still haven't filled in the "Corrected Month Ending Balance" for July; as we've discussed, we won't do that until we've finished the reconciliation process.)

The bank charge entry in DS's client ledger should look like this:

CLIENT LEDGER
CLIENT: DS
CASE #: 920123

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/31/92		FB, $447 Prof. fee	250.00		1,000.00
7/31/92	**BANK CHARGE - wiring $ to FB**		**15.00**		
7/31/92	CORRECTED MONTH ENDING BALANCE				
8/03/92	DS			250.00	1,250.00
8/07/92		FS, #451 Investigation	500.00		775.00
8/15/92	DS			250.00	1,000.00
8/22/92		FB, #456 Prof. fee	750.00		250.00
7/31/92	**BANK CHARGE - wiring $ to FB**		**15.00**		

The entry in the bank charges ledger should look like this:

BANK CHARGES LEDGER
CLIENT: Bank Charges
CASE #: N/A

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
6/30/92	CORRECTED MONTH ENDING BALANCE				50.00
7/01/92	Self			100.00	150.00
7/31/92		Check printing	**10.00**		**140.00**
7/31/92	**CORRECTED MONTH ENDING BALANCE**				

Reconcile the Account Journal with the Bank Statement

The purpose of this step is to make sure that the bank's records of the deposits and withdrawals you've made to your client trust bank account during the past month match your records. Since you've already reconciled the client ledgers with the account journal, you know that the entries in the client ledger agree with the ones in the account journal. Therefore, unless you find a mistake, during this stage of the reconciliation process you only have to compare the bank statement with the account journal.

Adjustments to Month Ending Balance. First, record any mistake correction entries that you made in the account journal and all uncredited deposits and undebited withdrawals on the "Adjustments to Month Ending Balance" form, as shown below:

FORM TWO

ADJUSTMENTS TO MONTH ENDING BALANCE
RECONCILIATION DATE: 8/22/92
CLIENT TRUST BANK ACCOUNT NAME: COMMON CLIENT TRUST BANK ACCOUNT
PERIOD COVERED BY BANK STATEMENT: 7/1/92 TO 7/31/92

A. DEPOSITS AND WITHDRAWALS NOT POSTED ON BANK STATEMENTS:

UNCREDITED DEPOSITS Date	Amount	UNDEBITED WITHDRAWALS Date	Amount
7/31/92	2,500.00	7/09/92	1,800.00
		7/31/92	250.00
		6/30/92	30.00
TOTAL:	2,500.00		2,080.00

B. MISTAKE CORRECTION ENTRIES (from Account Journal):

DATE	AMOUNT Additions	Subtractions	NET MISTAKE (+ OR -)
7/09/92	3,525.00	3,500.00	25.00
TOTAL MISTAKE CORRECTION ENTRIES:			25.00

In the space after "Reconciliation Date," write the day, month and year you do the reconciliation; in the space after "Client Trust Bank Account Name," write the name of the

client trust bank account (e.g., “Common Client Trust Bank Account”); in the space after “Period Covered by Bank Statement,” write the dates of the period covered by your most recent bank statement (e.g., 7/1/92 to 7/31/92, if you are doing your July 1992 reconciliation).

Deposits and withdrawals not posted on bank statement. Generally, the bank sends out statements one to three weeks after the end of the month. As a result, by the time you reconcile the account, you will usually have made deposits or withdrawals that aren't shown on the bank statement. In addition, checks you wrote or deposits you made may not have cleared by the time the bank produced the statement, and therefore the amounts of those checks or deposits won't be reflected in the account balance shown on the bank statement. Thus, in order to compare the balance the bank statement says is in the account at the end of the month with the balance your account journal shows for the end of the month, you have to adjust the account journal balance by *subtracting* all uncredited deposits and *adding* all undebited withdrawals.

These unposted transactions should be listed under “Deposits and Withdrawals Not Posted by the Bank.” To find out which transactions haven't been posted, you have to compare the entries on the bank statement with the entries in your account journal.

Go through each entry on the bank statement and compare it to the corresponding entry in your account journal. If the entry in the account journal exactly matches the entry on the bank statement, mark off the entry in the account journal to show that the money has cleared the banking process, and mark off the entry on the bank statement to show that you have verified it against the account journal. The marks in the account journal will help you keep track of items like checks that are never cashed, which otherwise can become those small, inactive balances that make your account harder to reconcile. (See Key Concept 6, **The Final Score is Always Zero,** page 7.) The marks should be permanent (i.e., in ink) and clearly visible, but shouldn't make it harder to read the entries. You should use the same mark consistently, to avoid confusion later.

When you are finished, all the entries on the bank statement should be checked off to show that you have verified them against the corresponding entries in the account journal. Now go back through the account journal to find any entries that are unmarked; these transactions haven't yet been debited or credited by the bank, and should therefore be listed in the appropriate column on the Adjustments to Month Ending Balance form. All entries in your account journal must either be marked to indicate that they have appeared on a bank statement, or recorded on this form.

Write the date and amount of the entry in the appropriate column on the Adjustments to Month Ending Balance form. Write uncredited deposits in the “Uncredited Deposits” column and undebited withdrawals in the “Undebited Withdrawals” column. (For busy client trust bank accounts, you may need more lines than the sample form gives to list all the unposted transactions. If you do, you can add lines to the copies of the forms you use, or attach additional pages that list the transactions that didn't fit on the form.)

When you've listed all the unposted transactions, add up the amounts in the “Uncredited Deposits” column and write the total in the space at the bottom of that column. Then add up the amounts in the “Undebited Withdrawals” column and write the total in the space at the bottom of that column.

As you go through the bank statement, there are two kinds of mistakes you may find:

1. **You find a deposit or withdrawal listed on the bank statement that isn't in your account journal.** To correct this mistake, go through your cancelled checks (if it's a withdrawal) or deposit slips (if it's a deposit) until you find the one that reflects the transaction on the bank statement. If you can't find a cancelled check or deposit slip that matches the entry on the bank statement, contact your banker and ask him or her to help you track down the

transaction. DON'T record the bank statement entry in your records until you verify that the transaction occurred; banks make mistakes too.

When you find the cancelled check or deposit slip that shows the transaction, record the transaction in both your account journal and in the client ledger of the client for whom the money was deposited or paid out. Remember that you have to enter the transaction twice in the account journal and twice in the client ledger; once above the "CORRECTED MONTH ENDING BALANCE" line, and once after the latest entry. The entries should be the same as when recording any other transaction, but include a notation indicating that you'd forgotten to enter the transaction at the time it occurred.

After you correct the mistake in your client ledger and account journal, record it on Form Two under "Mistake Correction Entries," as described below.

2. **An entry in the bank statement is different from the corresponding entry in the account journal.** You correct this mistake the same way you correct a transaction you forgot to record. First, find the cancelled check or deposit slip that shows the transaction to figure out which record is correct, the account journal or the bank statement. If you can't find a cancelled check or deposit slip for this transaction, contact your banker and ask him or her to help you track it down before you make any changes in your records.

   If the cancelled check or deposit slip shows that the bank statement is wrong, write a note on the bank statement that clearly describes the mistake, then contact your banker and tell him or her to correct their records. If it shows that your account journal is wrong, record the correction in the account journal *and* the appropriate client ledgers using the same kind of mistake correction entries we used in our example. Like all mistake correction entries, these must be entered twice in both the account journal and the client ledger for the client on whose behalf you deposited or paid out the money; once above the "Corrected Month Ending Balance" line, and once after the latest entry.

   After you correct the mistake in your client ledger and account journal, record it on Form Two under "Mistake Correction Entries," as described below.

Mistake correction entries. Under "MISTAKE CORRECTION ENTRIES," list all mistake correction entries you entered in the space above the Corrected Month Ending Balance in your account journal. In the "Date" column, write the date of each mistake. In the "Amount" column, write the amount of each mistake correction entry. As you remember, each mistake correction entry requires two notations; one to back out the incorrect amount, and one to add in the correct amount. If the mistake correction entry amount was entered under the "Deposits (Add)" column in your account journal, write the amount under the "Additions" column. If the mistake correction entry amount was entered under the "Withdrawals (Subtract)" column in your account journal, write the amount under the "Subtractions" column. Then write in the net amount of the mistake under the "Net Mistake (+ or -)" column. (If the amount in the "Subtractions" column is larger than the amount in the "Additions" column, the net mistake will be negative and should be recorded with parentheses around it. If the amount in the "Additions" column is larger than the amount in the "Subtractions" column, the net mistake will be positive and should be recorded without parentheses around it.) When you have recorded all the mistake correction entries, total the amounts in the "Net Mistake (+ or -)" column and enter it in the space after "Total Mistake Correction Entries." If this amount is negative, put parentheses around it. If it's positive, don't.

If you found mistakes while you were going through the bank statement (in other words, after you finished filling out Form One), you have to go back to Form One, enter the new "Total Mistake Correction Entries" and a new "Adjusted Month Ending Account Balance" before you go on to the next step.

Reconciliation form. The next step is to reconcile the balance the bank statement shows for the end of the month you are reconciling with the balance your account journal shows for the date by filling out the "Reconciliation" form:

FORM THREE

RECONCILIATION

RECONCILIATION DATE:	8/22/92		
CLIENT TRUST BANK ACCOUNT NAME:	COMMON CLIENT TRUST BANK ACCOUNT		
PERIOD COVERED BY BANK STATEMENT:	7/1/92 TO 7/31/92		
ADJUSTED MONTH ENDING BALANCE: (From Form One)			10,575.00
MINUS TOTAL BANK CHARGES (From Bank Statement)		(25.00)	
PLUS TOTAL INTEREST EARNED (From Bank Statement)		IOLTA	
CORRECTED MONTH ENDING BALANCE: (Total)			10,550.00
MINUS UNCREDITED DEPOSITS: (From Form Two)		(2,500.00)	
PLUS UNDEBITED WITHDRAWALS: (From Form Two)		2,080.00	
RECONCILED TOTAL:			10,970.00
BANK STATEMENT BALANCE:			10,970.00

1. In the space after "Reconciliation Date," write the day, month and year you did the reconciliation; in the space after "Client Trust Bank Account Name," write the name of the client trust bank account (e.g., "Common Client Trust Bank Account"); in the space after "Period Covered by Bank Statement," write the dates of the period covered by your most recent bank statement (e.g., 7/1/92 to 7/31/92, if you are doing your July 1992 reconciliation).

2. In the space after "Adjusted Month Ending Balance," write the balance shown in the "Adjusted Month Ending Account Journal Balance" space on the Client Ledger Balance form.

3. In the space after "Minus Total Bank Charges," write in the total of all bank charges to the account shown on the bank statement. For IOLTA accounts, don't include amounts charged to the State Bar. (Note the parentheses around this number show it is negative and should be subtracted.)

4. If this is an individual interest-bearing individual client trust bank account, in the space after "Plus Total Interest Earned," write in the total interest shown on the bank statement. Write "IOLTA" in this space if this is an IOLTA account, and "non-interest bearing" if it is a non-interest bearing client trust bank account.

5. To the amount in the "Month Ending Balance" space:
   Subtract the amount you wrote in the "Total Bank Charges" space;
   Add the amount in the "Total Interest Earned" space; and
   Write the result in the "Corrected Month Ending Balance" space.

6. In the "Minus Uncredited Deposits" space, write the total of the "Uncredited Deposits" column you listed on Form Two.

7. In the "Plus Uncredited Withdrawals" space, write the total of the "Uncredited Withdrawals" column you listed on Form Two.

8. To the amount in the "Corrected Month Ending Balance" space:
   Add the undebited withdrawals;
   Subtract the uncredited deposits; and
   Write the total in the "Reconciled Total" space.

9. Write the balance shown on the bank statement in the space after "Bank Statement Balance." This amount should exactly match the reconciled total above it. If it does, you have successfully reconciled the account and are ready to proceed to the last step. (If it doesn't, call in a bookkeeper or refer to Appendix 5, **What to Do When the Reconciled Total and the Bank Statement Balance Don't Exactly Match,** page 76, and use the process it describes to find and correct the mistake.)

Entering the Corrected Month Ending Balance and Corrected Current Running Balance

When you have completed all three forms and the Corrected Month Ending Balance is exactly the same as the Bank Statement Balance, the account is reconciled. Now you are ready to enter the Corrected Month Ending Balance for July and the Corrected Current Running Balance in the account journal and in each client ledger.

Here's how the Corrected Month Ending Balance entry would look in the account journal:

ACCOUNT JOURNAL
CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/31/92	DS		FB, #447 Prof. fee	250.00		8,000.00
7/31/92	DC	JA			2,500.00	10,500.00
7/09/92	ERROR	- backing out wrong deposit - adding in correct deposit		3,500.00	 3,525.00	7,000.00 10,525.00
7/31/92	BANK CHARGE	- new checks - wire for DS		10.00 15.00		10,515.00 10,500.00
7/31/92	**CORRECTED MONTH ENDING BALANCE**					**10,500.00**
8/01/92	KB		Self, #448 Legal Fee	1,500.00		9,000.00

As you can see, you got the Corrected Month Ending Balance by subtracting the amount of the wrong deposit from the old July 31 balance of $10,500.00, adding the amount of the correct deposit and subtracting the amounts of the bank charges. Notice that the Corrected Month Ending Balance is identical to the balance after the interest entry.

This is how the Corrected Current Running Balance entry looks in the account journal:

ACCOUNT JOURNAL
CLIENT TRUST BANK ACCOUNT NAME: Common Client Trust Bank Account

DATE	CLIENT	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
8/21/92	Bank chg.	Self			100.00	11,500.00
8/22/92	DS		FB, #457 Prof. fee	1,000.00		10,500.00
8/22/92	DC	DC			6,500.00	17,000.00
7/09/92	ERROR	- backing out wrong deposit - adding in correct deposit		3,500.00	 3,525.00	13,500.00 17,025.00
7/31/92	BANK CHARGE	- new checks - wire for DS		10.00 15.00		17,015.00 17,000.00
8/22/92	**CORRECTED CURRENT RUNNING BALANCE**					**17,000.00**

As you can see, you got the Corrected Current Running Balance by subtracting the amount of the wrong deposit from the old August 22 balance of $17,000.00, adding the amount of the correct deposit and subtracting the amounts of the bank charges.

Now you have to go into each client ledger and enter the Corrected Month Ending Balance for July and Corrected Current Running Balance for each client. Let's look at DS's ledger to see what these entries should look like:

CLIENT LEDGER
CLIENT: DS
CASE #: 920123

DATE	SOURCE OF DEPOSIT	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE
7/31/92		FB, $447 Prof. fee	250.00		1,000.00
7/31/92	BANK CHARGE - wiring $ to FB		15.00		985.00
7/31/92	CORRECTED MONTH ENDING BALANCE				**985.00**
8/03/92	DS			250.00	1,235.00
8/07/92		FS, #451 Investigation	500.00		735.00
8/15/92	DS			250.00	985.00
8/22/92		FB, #457 Prof. fee	750.00		235.00
7/31/92	BANK CHARGE - wiring $ to FB		15.00		220.00
8/22/92	**CORRECTED CURRENT RUNNING BALANCE**				**220.00**

As you can see, you got the Corrected Month Ending Balance by subtracting the amount of the bank charge from the old July 31 balance of $1,000.00. You got the Corrected Current Running Balance by subtracting the amount of the bank charge from the old August 22 balance of $235.00.

When you write in the Corrected Month Ending Balance for July and the Corrected Current Running Balance for KB, DC and GC, you will have reconciled this trust account and fully complied with rule 4-100(C).

Now clip all the pages that relate to the reconciliation process together (all three forms, any attached pages, and any adding machine tapes) and file them away.

Afterword

If you've read all the way through this handbook, you should now know everything you need in order to properly receive, pay out and account for money you hold for your clients. However, your professional responsibility isn't to *know* client trust accounting, it's to *do* client trust accounting. There are three final points without which your best efforts to properly account for your clients' money will be in vain:

1. Set up a complete client trust accounting system;

2. Consistently and rigorously follow your client trust accounting system; and

3. Don't rely on others to do your client trust accounting. It's your responsibility.

APPENDIX 1: OTHER REGULATIONS RELATING TO CLIENTS AND MONEY

There are a few basic rules relating to clients and money that, while not directly related to client trust accounting, are so fundamental to the attorney-client relationship that we have to mention them here. (The text of these rules can be found in Appendix 2, page 44.)

Amount of Fees. The amount you can charge for your services is regulated by Rule of Professional Conduct 4-200, which says that you can't enter into an agreement for, charge or collect an illegal or "unconscionable" fee. The rule lays out eleven of the many factors that go into determining whether or not a fee is unconscionable, including the amount of the fee in proportion to the value of the services, the relative sophistication of attorney and client, the novelty and difficulty of the case and skill necessary to handle it, whether the fee is fixed or contingent, and the time and work involved.

Fee Agreements. There are three provisions of the Business and Professions Code relating to fee agreements. Section 6148 requires that whenever you can reasonably foresee that the total expense to the client, including attorney's fees, will exceed $1,000, you must enter into a written fee agreement with your client. The written fee agreement must contain the hourly rate and any standard rates, fees and charges applicable to the case, the general nature of the services to be provided to the client, and the responsibilities you and the client have with respect to performance of the contract. Consider utilizing the fee agreement to advise your client of your duties to third parties in the presence of an executed medical lien.

All bills for services rendered must include the basis for the bill, including the amount, rate, and the basis for calculation or other method of determining your fee. You are obligated to give a bill to your client no later than 10 days after your client requests one. Your client is entitled to request a bill every 30 days.

If you fail to enter into a written agreement with your client, the fee agreement is voidable at the client's option, after which you are entitled to collect a reasonable fee. The provisions of section 6148 don't apply if you render legal services in an emergency, if the services are of the same general kind you've already provided to and been paid for by the client, if the client knowingly states in writing after full disclosure that a written fee agreement isn't required, or if the client is a corporation.

Business and Professions Code section 6149 makes the required fee agreement a confidential communication within the meaning of Business and Professions Code section 6068, subdivision (e) and Evidence Code section 952.

When you and your client enter into a fee agreement on a contingency fee basis, you must comply with the provisions of Business and Professions Code section 6147. You and your client must sign the fee agreement and you must give the client a duplicate copy. The contract must be in writing and must include the contingency rate, how disbursement and costs will be handled, whether your client will be required to pay any compensation arising out of matters not covered by the agreement, notice that the fee is not set by law but is negotiable, and a statement that the rates set forth pursuant to section 6146, which applies in medical malpractice actions, sets the maximum contingency fee limits. If you fail to comply with the provisions of this section, the agreement is voidable at your client's option, after which you are entitled to collect a reasonable fee.

Business and Professions Code section 6146 sets the limits on the fee you can charge a client on a contingency basis where your client is seeking damages in connection with an action for an injury or damage against a health care provider based on the health care provider's alleged professional negligence. For example, section 6146 provides that you can only charge up to 40% of the first $50,000 recovered, 33.3% of the next $50,000, and so

forth. The limits in section 6146 apply regardless of whether the recovery is by settlement, arbitration or judgement, and whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

Fee Disputes. Fee disputes with your client are regulated by Business and Professions Code section 6200 *et seq.*, which sets forth the fee arbitration program. This section requires you to participate in fee arbitration if your client requests it. When you file a fee collection action against your client, you must forward a written notice to the client before or at the time of service of the summons. Failure to give this written notice is a grounds for dismissal of your fee collection action. If the client fails to request fee arbitration within 30 days of receipt of this notice, the client is deemed to have waived the right to arbitration. Most fee arbitrations are conducted by the county bar association in the county where the fee dispute took place. However, if the county bar association isn't equipped to carry out the fee arbitration, the State Bar will conduct it. If an attorney fails to pay a binding award to the client of fees or costs, the attorney can be placed on inactive status and would not be eligible to practice law until the award is paid.

Loans To and From Clients and Securing Payments from Clients. You are permitted to borrow money from or lend money to your client, or obtain a security interest to ensure payment of fees, provided that you fully comply with Rule of Professional Conduct 3-300. This rule requires that:

1. The transaction and terms of the acquisition are fair and reasonable to the client and are transmitted to the client in a manner and under terms which should have been reasonably understood by the client;

2. The client is given a reasonable opportunity to seek the advice of independent counsel on the transaction; and

3. The client consents in writing to the transaction.

Cash Reporting Requirement. The Internal Revenue Code (26 U.S.C. § 6050I) requires that when you receive more than $10,000 in cash, you report that fact to the IRS on form 8300 within 15 days of the date of the transaction. This section appears to apply to both cash you receive for fees, and cash you hold in trust.

APPENDIX 2: TEXT OF RULES AND STATUTES CITED

Relevant California Rules of Professional Conduct

Rule 3-300. Avoiding Interests Adverse to a Client.

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

Discussion:

Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 4-200.

Rule 3-300 is not intended to apply where the member and client each make an investment on terms offered to the general public or a significant portion thereof. For example, rule 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a third party. B, A's client, makes the same investment. Although A and B are each investing in the same business, A did not enter into the transaction "with" B for the purposes of the rule.

Rule 3-300 is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees. (Amended by order of Supreme Court, operative September 14, 1992.)

Rule 4-100. Preserving Identity of Funds and Property of a Client.

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled “Trust Account,” “Client's Funds Account” or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

(1) Funds reasonably sufficient to pay bank charges.

(2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or

law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A member shall:

(1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.

(4) Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.

(C) The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

Standards:

Pursuant to rule 4-100(C) the Board of Governors of the State Bar adopted the following standards, effective January 1, 1993, as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3).

(1) A member shall, from the date of receipt of client funds through the period ending five years from the date of appropriate disbursement of such funds, maintain:

(a) a written ledger for each client on whose behalf funds are held that sets forth:

(i) the name of such client,

(ii) the date, amount and source of all funds received on behalf of such client,

(iii) the date, amount, payee and purpose of each disbursement made on behalf of such client, and

(iv) the current balance for such client;

(b) a written journal for each bank account that sets forth:

(i) the name of such account,

(ii) the date, amount and client affected by each debit and credit, and

(iii) the current balance in such account;

(c) all bank statements and cancelled checks for each bank account; and

(d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A member shall, from the date of receipt of all securities and other properties held for the benefit of client through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written journal that specifies:

(a) each item of security and property held;

(b) the person on whose behalf the security or property is held;

(c) the date of receipt of the security or property;

(d) the date of distribution of the security or property; and

(e) person to whom the security or property was distributed.

(Trust Account Record Keeping Standards as Adopted by the Board of Governors on July 11, 1992, effective on January 1, 1993.)

Rule 4-200. Fees for Legal Services.

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

(B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:

(1) The amount of the fee in proportion to the value of the services performed.

(2) The relative sophistication of the member and the client.

(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.

(5) The amount involved and the results obtained.

(6) The time limitations imposed by the client or by the circumstances.

(7) The nature and length of the professional relationship with the client.

(8) The experience, reputation, and ability of the member or members performing the services.

(9) Whether the fee is fixed or contingent.

(10) The time and labor required.

(11) The informed consent of the client to the fee.

(Amended by order of Supreme Court, operative September 14, 1992.)

Relevant Business and Professions Code Sections

§6069. Authorization for Disclosure of Financial Records; Subpoena; Notice; Review

(a) Every member of the State Bar shall be deemed by operation of this law to have irrevocably authorized the disclosure to the State Bar and the Supreme Court pursuant to section 7473 of the Government Code of any and all financial records held by financial institutions as defined in subdivisions (a) and (b) section 7465 of the Government Code pertaining to accounts which the member must maintain in accordance with the Rules of Professional Conduct; provided that no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to section 6049 of this code, and further provided that the board of governors shall by rule provide notice to the member similar to that notice provided for in subdivision (d) of section 7473 of the Government Code. Such notice may be sent by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar.

The State Bar shall, by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar, notify its members annually of the provisions of this subdivision (a).

(b) With regard to the examination of all financial records other than those mentioned in subdivision (a) of this section, held by financial institutions as defined in subdivisions (a) and (b) of section 7465 of the Government Code, no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to section 6049 of this code and the board of governors shall by rule provide for service of a copy of the subpoena on the customer as defined in subdivision (d) of section 7465 of the Government Code and an opportunity for the customer to move the board or committee having jurisdiction to quash the subpoena prior to examination of the financial records. Review of the actions of the board or any committee on such motions shall be had only by the Supreme Court in accordance with the procedure prescribed by the court. Service of a copy of any subpoena issued pursuant to this subdivision (b) may be made on a member of the State Bar by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar. If the customer is other than a member, service shall be made pursuant to Chapter 4 (commencing with section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar.

(c) For purposes of this section, "member of the State Bar" or "member" means every member of the State Bar, law firm in California of which a member of the State Bar is a member, and law corporation within the meaning of Article 10 of Chapter 4 of Division 3 of this code. (Added by Stats. 1976, ch. 1320; Amended by Stats. 1978, ch. 1346.)

§6091.1 Client Trust Fund Accounts—Investigation of Overdrafts and Misappropriations

(a) The Legislature finds that overdrafts and misappropriations from attorney trust accounts are serious problems, and determines that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts.

A financial institution, including any branch, which is a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211, shall report to the State Bar in the event any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) All reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby. These reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(c) Every attorney practicing or admitted to practice in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements of this section.

(d) Nothing in this section shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by sub-divisions (a) and (b). (Added by Stats. 1988, ch. 1159.)

§6091.2 Definitions Applicable to Section 6091.1

As used in Section 6091.1:

(a) "Financial institution" means a bank, savings and loan, or other financial institution regulated by a federal or state agency, which can accept those deposits, pay interest thereon, and insure the deposits by an agency of the federal government, and if the depository has a notice of withdrawal requirement, the required notice does not exceed 30 days.

(b) "Properly payable" means an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this state.

(c) "Notice of dishonor" means the notice which a financial institution is required to give, under the laws of this state, upon presentation of an instrument which the institution dishonors. (Added by Stats. 1988, ch. 1159.)

§6146. Limitations; Periodic Payments; Definitions

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

(1) Forty percent of the first fifty thousand dollars ($50,000) recovered.

(2) Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered

(3) Twenty-five percent of the next five hundred thousand dollars ($500,000) recovered.

(4) Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars ($600,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1; Amended by Stats. 1975, 2nd Ex. Sess., ch. 2, effective September 24, 1975, operative December 12, 1975; Stats. 1981, ch. 714; Stats. 1987, ch. 1498.)

§6147. Contingency Fee Contract: Contents; Effect of Noncompliance; Application to Contracts for Recovery of Workers' Compensation Benefits

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982, Amended by Stats. 1994, ch. 479; Stats. 1996, ch. 1104, operative January 1, 2000.)

§6147.5 Contingency Fee Contracts; Recovery of Claims between Merchants

(a) Sections 6147 and 6148 shall not apply to contingency fee contracts for the recovery of claims between merchants as defined in Section 2104 of the Commercial Code, arising from the sale or lease of goods or services rendered, or money loaned for use, in the conduct of a business or profession if the merchant contracting for legal services employs 10 or more individuals.

(b) (1) In the instances in which no written contract for legal services exists as permitted by subdivision (a), an attorney shall not contract for or collect a contingency fee in excess of the following limits:

(A) Twenty percent (20%) of the first three hundred dollars ($300) collected.

(B) Eighteen percent (18%) of the next one thousand seven hundred dollars ($1,700) collected.

(C) Thirteen percent (13%) of sums collected in excess of two thousand dollars ($2,000).

(2) However, the following minimum charges may be charged and collected:

(A) Twenty-five dollars ($25) in collections of seventy-five dollars ($75) to one hundred twenty-five dollars ($125).

(B) Thirty-three and one-third percent of collections less than seventy-five dollars ($75). (Added by Stats. 1990, ch. 713.)

§6148. Written Fee Contract: Contents; Effect of Noncompliance

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client, or the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 1996, ch. 1104, operative January 1, 2000.)

§6149. Written Fee Contract Confidential Communication

A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code. (Added by Stats. 1986, ch. 475.)

§6149.5 Insurer Notification to Claimant of Settlement Payment Delivered to Claiment's Attorney

(a) Upon the payment of one hundred dollars ($100) or more in settlement of any third-party liability claim the insurer shall provide written notice to the claimant if both of the following apply:

(1) The claimant is a natural person.

(2) The payment is delivered to the claimant's lawyer or other representative by draft, check, or otherwise.

(b) For purposes of this section, “written notice” includes providing to the claimant a copy of the cover letter sent to the claimant's attorney or other representative that accompanied the settlement payment.

(c) This section shall not create any cause of action for any person against the insurer based upon the insurer's failure to provide the notice to a claimant required by this section. This section shall not create a defense for any party to any cause of action based upon the insurer's failure to provide this notice. (Added by Stats. 1994, ch. 479.)

§6200. Establishment of System and Procedure; Jurisdiction; Local Bar Association Rules

(a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procudure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in sub-division (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, the arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1990, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

§6201. Notice to Client; Request for Arbitration; Client's Waiver of Right to Arbitration

(a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client for recovery of fees, costs, or both, covered by the provisions of this article. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute. The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, subject to the provisions of this article, commences an action in any court, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action; failure to so request arbitration prior to the filing of an answer shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action shall be stayed, without the necessity of court order, until the award of the arbitrators is issued or the arbitration is otherwise terminated, and the time of the continuance of the stay shall not be part of the time limited for the commencement of the action. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if the court finds that the matter, or any part of it, is not an appropriate one for arbitration under the provisions of this article. The action may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

§6202. Disclosure of Attorney-Client Communication and Work Product; Limitation

The provisions of Article 3 (commencing with section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Section 2016 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (1) an arbitration hearing pursuant to this article; (2) a trial after arbitration; or (3) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104.)

§6203. Award; Contents; Finality; Petition to Court; Award of Fees and Costs

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for attorney's fees incurred, notwithstanding any contract between the parties providing for such an award or attorney's fees. However, this section shall not preclude an award of attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after mailing of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) A court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction, or vacation of the award. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner

provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon

(d) (1) In any matter in which (A) the award of the arbitrators includes a refund of fees or costs, or both, to the client; (B) the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204; and (C) the attorney has not complied with that award, the State Bar shall enforce the award by placing the attorney on involuntary inactive status until the award has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award should be enforced pursuant to this subdivision. An award shall be so enforced if either of the following applies:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar. However, the award shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the award, or (ii) is unable to pay the award.

(3) An attorney who has failed to comply with a binding award shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount awarded to the client or one thousand dollars ($1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date the arbitration award was mailed. However, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1992, ch. 1265, operative January 1, 1993; Stats. 1993, ch. 1262; Stats. 1996, ch. 1104.)

§6204. Agreement to be Bound by Award of Arbitrator; Trial After Arbitration in Absence of Agreement; Prevailing Party; Effect of Award and Determination

(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after mailing of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1992, ch. 1265; Stats. 1996. ch. 1104; Stats. 1998, ch. 798.)

§6204.5 Disqualification of Arbitrators; Post-arbitration Notice

(a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator upon request of the client.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding. (Added by Stats. 1986, ch. 475; Stats. 1996, ch. 1104.)

§6205. Construction of Article

(Repealed by Stats. 1996, ch. 1104.)

§6206. Arbitration Barred if Time for Commencing Civil Action Barred; Exception

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under

this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825.)

§6211. Definition of Funds to be Deposited in Interest Bearing Demand Trust Account; Interest Earned Paid to State Bar; Other Accounts or Trust Investments; Rules of Professional Conduct; Disciplinary Authority of Supreme Court or State Bar

(a) An attorney or law firm, which in the course of the practice of law receives or disburses trust funds, shall establish and maintain an interest bearing demand trust account and shall deposit therein all client deposits that are nominal in amount or are on deposit for a short period of time. All such client funds may be deposited in a single unsegregated account. The interest earned on all such accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.

(b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank accounts or other trust investments as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited in accordance with sub-division (a).

(c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of interest bearing trust accounts for unsegregated client funds pursuant to this article.

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of members of the State Bar. (Added by Stats. 1981, ch. 789.)

§6212. Requirements in Establishing Client Trust Accounts; Amount of Interest; Remittance to State Bar; Statements and Reports

An attorney who, or a law firm which, establishes an interest bearing demand trust account pursuant to subdivision (a) of section 6211 shall comply with all of the following provisions:

(a) The interest bearing trust account shall be established with a bank or such other financial institutions as are authorized by the Supreme Court.

(b) The rate of interest payable on any interest bearing demand trust account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by an attorney or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby.

(c) The depository institution shall be directed to do all of the following:

(1) To remit interest on the average daily balance in the account, less reasonable service charges, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any.

(3) To transmit to the depositing attorney or law firm at the same time a report showing the amount paid to the State Bar for that period, the rate of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made. (Added by Stats. 1981, ch. 789.)

Relevant Code of Civil Procedure Section

§1518. When Fiduciary Property Escheats to State.

(a) All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if after is becomes payable or distributable, the owner has not, within a period of three years, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state are not payable or distributable within the meaning of subdivision (a) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, when a person holds property as an agent for a business association, he or she is deemed to hold the property in a fiduciary capacity for the business association alone, unless the agreement between him or her and the business association clearly provides the contrary. For the purposes of this chapter, if a person holds property in a fiduciary capacity for a business association alone, he or she is the holder of the property only insofar as the interest of the business association in the property is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned. (Added by Stats. 1959, ch. 1809; Amended by Stats. 1961, ch. 1904; Stats. 1968, ch. 356, operative January 1, 1969; Stats. 1976, ch. 49; Stats. 1982, ch. 786; Stats. 1988, ch. 286; Stats. 1990, ch. 450, effective July 31, 1990.)

Relevant Internal Revenue Code Section

§6050I. Returns relating to cash received in trade or business

(a) Cash receipts of more than $10,000

Any person -

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transactions (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return -

(1) is in such form as the Secretary may prescribe,

(2) contains -

(A) the name, address, and TIN of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions

(1) Cash received by financial institutions.--Subsection (a) shall not apply to--

(B) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(C) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary instruments

For purposes of this section, the term "cash" includes--

(1) foreign currency, and

(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing -

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited

(1) In general

No person shall for the purpose of evading the return requirements of this section -

(A) cause or attempt to cause a trade or business to fail to file a return required under this section.

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties

A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks

(1) In general

Every clerk of a Federal or State criminal court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return

A return is described in this paragraph if such return -

(A) is in such form as the Secretary may prescribe, and

(B) contains -

(i) the name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

(3) Specified criminal offense

For purposes of this subsection, the term "specified criminal offense" means -

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

(4) Information to Federal prosecutors

Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

(5) Information to payors of bail

Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk's office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

(Added Pub.L. 98-369, Div. A, Title I, §146(a), July 18, 1984, 98 Stat. 685, and amended Pub.L. 99-514, Title XV §1501(c)(12), Oct. 22, 1986, 100 Stat. 2739; Pub.L. 100-690, Title VII, §7601(a)(1), Nov. 18, 1988, 102 Stat. 4503; Pub.L. 101-508, Title XI, §11318(a), (c), Nov. 5, 1990, 104 Stat. 1388-458, 1388-459; Pub. L. 103-322, Title II, §20415(a), (b)(3), Sept. 13, 1994, 108 Stat. 1832, 1833; Pub.L. 104-168, Title XII, §1201(a)(9), July 30, 1996, 110 Stat. 1469.)

Relevant Evidence Code Sections

§1270. "A business."

As used in this article, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. (Stats. 1965, ch. 299.)

§1271. Business record.

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;

(b) The writing was made at or near the time of the act, condition, or event;

(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness. (Stats. 1965, ch. 299.)

§1272. Absence of entry in business records.

Evidence of the absence from the records of a business of a record of asserted act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the non-existence of the condition, if:

(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and

(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist. (Stats. 1965, ch. 299.)

§1552. Evidence–Printed Representation of Computer Information or Computer Program; Burden of Proof

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530. (Added by Stats. 1998, ch. 100.)

§1553. Evidence—Printed Representation of Images Stored on Video or Digital Medium; Burden of Proof

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent. (Added by Stats. 1998, ch. 100.)

Rules 1–1.5 of the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons

(Adopted by the State Bar Board of Governors September 10, 1982. Amended April 20, 1985, July 11, 1989, December 10, 1994, and January 27, 1996.)

Rule 1 All funds received or held for the benefit of clients or otherwise in a fiduciary capacity in the course of the practice of law by a member of the State Bar or law firm of which (s)he is a member and determined by that attorney or firm to be nominal in amount or to be held by the attorney or firm for a short period of time, must be deposited in one or more interest-bearing demand trust accounts, as required by California Business and Professions Code Section 6211(a).

In these rules, "client" includes a group of persons which has engaged the attorney or firm for a common purpose. Establishing such an account constitutes consent by the attorney for the depository institution to furnish copies of periodic account statements to the State Bar.

Rule 1.1 All interest earned by funds held in trust accounts required by Business and Professions Code Section 6211(a) shall be paid by the bank or branch of a bank where the funds are deposited directly to the State Bar of California and used for the purposes set

forth in Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The interest payments to the State Bar shall be paid quarterly or at more frequent intervals. Interest for all trust accounts held by the bank or branch of a bank during such quarter or other interval may be remitted in one payment.

Nothing in these rules shall create an obligation or pledge of the credit or of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to these rules shall be limited to the monies generated pursuant to Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The Board of Governors may adopt such guidelines as may be appropriate to implement administration of these rules.

Rule 1.2 The term "bank" wherever appearing in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall include commercial banks and such other institutions as may be permitted by the California Supreme Court and which (a) have the ability to accept deposits which are insured by an agency of the federal government, (b) pay interest on such deposits, (c) are regulated by federal or state agencies, and (d) if it has notice of withdrawal requirements, the required notice does not exceed thirty (30) days.

Rule 1.3 "Interest-Bearing Trust Account" or "Interest-Bearing Demand Trust Account" wherever used in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall have the same meaning. An interest-bearing trust account shall be one in which the funds are subject to prompt withdrawal, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the bank or branch of a bank so long as such notification requirement does not exceed thirty (30) days.

Rule 1.4 Nothing in these rules shall be construed as affecting or impairing the duties and obligations of attorneys or law firms pursuant to the statutes and rules governing the conduct of members of the State Bar including, but not limited to, provisions of Rule 4-100 of the Rules of Professional Conduct requiring a member to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the member which the client is entitled to receive.

Trust funds are nominal in amount or are held for a short period of time and must be placed in an interest-bearing trust account as required by Section 6211(a) of the Business and Professions Code, if it is not practical to segregate them to earn income for the benefit of the client in light of the income the funds could earn or the costs involved in earning or accounting for any such income.

If the attorney determines that the trust funds should be segregated to earn income for the benefit of the client, the funds shall be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client directs in writing.

Rule 1.5 Each member of the State Bar and firm of attorneys shall determine whether trust funds are nominal in amount or are to be held for a short period of time in accordance with Rule 1.4. No disciplinary matter shall be pursued by the State Bar against an attorney solely by reason of the attorney's making such determination in good faith.

APPENDIX 3: INDEX OF APPLICABLE CASES

Duties, In General

In the Matter of Robins (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. The duty to keep client's funds safe is a personal obligation of the attorney which is nondelegable. (See also *Palomo v. State Bar* (1984) 36 Cal.3d 785 [685 P.2d 1185, 205 Cal.Rptr. 834].)

Giovanazzi v. State Bar (1980) 28 Cal.3d 465 [619 P.2d 1005, 169 Cal.Rptr. 581]. The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited and purportedly held in trust supports a conclusion of misappropriation.

Advanced Fees

S.E.C. v. Interlink Data Network of Los Angeles (9th Cir. 1996) 77 F.3d 1201, 1206. An attorney must keep advances for fees in a client trust account if the attorney's fee agreement specifically provides that the attorney must do so.

T & R Foods, Inc. v. Rose (1996) 47 Cal.App.4th Supp.1. The appellate department of the Superior Court in Los Angeles held that an attorney has a duty to deposit advanced fees, which are not yet earned, into a client trust account.

Baranowski v. State Bar (1979) 24 Cal.3d 139. The Supreme Court held that rule 8-101 (current rule 4-100) requires that advanced costs be placed in a designated trust account. However, the court declined to resolve the issue of whether an advanced fee payment is required to be placed in an identifiable trust account until such time as it is earned.

Settlement Drafts

In the Matter of Robert Steven Kaplan (Rev.Dept. 1993) 2 Cal.State Bar Ct. Rptr. 509. An attorney is obligated to act promptly to release funds to a former client by endorsing the settlement draft. A delay has the effect of withholding funds the client is entitled to receive pursuant to Rule 4-100(B)(4).

Maintain Actual Records of Trust Account Activity

In the Matter of Doran (Rev. Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876. Where an attorney made no effort to understand the responsibilities involved in maintaining a trust account, never determined the balance in the trust account, and did not maintain a ledger or confirm deposits made to the trust account, the attorney's conduct is no less than gross negligence and supports a finding of moral turpitude.

Dixon v. State Bar (1985) 39 Cal.3d 335 [702 P.2d 590, 216 Cal.Rptr. 432]. The purpose of keeping proper books of account, vouchers, receipts, and checks is to be prepared to make proof of the honesty and fair dealing of attorneys when their actions are called into question. (See also *Clark v. State Bar* (1952) 39 Cal.2d 161 [246 P.2d 1].)

Fitzsimmons v. State Bar (1983) 34 Cal.3d 327 [667 P.2d 700, 193 Cal.Rptr. 896]. An attorney's failure to keep adequate records warrants discipline.

Weir v. State Bar (1979) 23 Cal.3d 564 [591 P.2d 19, 152 Cal.Rptr. 921]. The failure to keep proper *books of accounts, vouchers, receipts and checks* is a breach of an attorney's duty to his clients.

Signatories on Client Trust Account

In re Basinger (1988) 45 Cal.3d 1348 [756 P.2d 833, 249 Cal.Rptr. 110]. Attorney gave secretary/office manager a general power of attorney to handle firm's accounts and issue checks. Secretary and attorney convicted of grand theft of client and partnership monies.

Waysman v. State Bar (1986) 41 Cal.3d 452 [714 P.2d 1239, 224 Cal.Rptr. 101]. Supreme Court disapproved use of *presigned* checks left with secretary.

Maintain Copies of Other Materials Relating to the Attorney's Financial Relationship with the Client

Receipts for fees

Fitzsimmons v. State Bar (1983) 34 Cal.3d 327 [667 P.2d 700, 193 Cal.Rptr. 896]. Attorney's failure to give client receipts for attorney's fees disapproved.

All Retainer and Compensation Contracts

In the Matter of Respondent F (Rev. Dept. 1992) 2 Cal. State Bar Rptr. 17. Attorneys must retain funds in trust when the attorney's right to the funds is disputed by the client. The funds are required to be kept in trust until the resolution of the dispute.

In the Matter of Koehler (Rev. Dept. 1991) 1 Cal. State Bar Rptr. 615, headnote 5. An attorney applied advanced costs to his legal fees, thereby violating the requirement that advanced costs be held in trust. The failure to return the unused portion of such funds promptly when requested violated the rule requiring prompt payment of client funds on demand.

Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 359, 266 Cal.Rptr. 632]. The failure to have a written contingency fee contract and to provide a copy to the client constitutes a failure to maintain records of or render appropriate accounts to the client. (See also *Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327 [667 P.2d 700, 193 Cal.Rptr. 896].)

Palomo v. State Bar (1984) 36 Cal.3d 785 [685 P.2d 1185, 205 Cal.Rptr. 834]. General language in fee agreement will *not* convey general power of attorney to sign checks on client's behalf.

Grossman v. State Bar (1983) 34 C.3d 73 [664 P.2d 542, 192 Cal.Rptr. 397]. Attorney misappropriated client funds where he initially agreed to represent his client in a personal injury matter on a 33 1/3 contingent fee basis, and after settling the case, unilaterally increased the fee to 40 percent.

Academy of CA Optometrists v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]. Contracts which violate the canons of professional ethics of an attorney may for that reason be void.

Brody v. State Bar (1974) 11 Cal.3d 347 [521 P.2d 107, 113 Cal.Rptr. 371]. An attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it, even though he may be *entitled* to reimbursement for his fees. (See also *Crooks v. State Bar* (1970) 3 Cal.3d 346 [75 P.2d 872, 90 Cal.Rptr. 60].)

Copies of all bills

Dreyfus v. State Bar (1960) 54 Cal.2d 799 [356 P.2d 213, 8 Cal.Rptr. 469]. No receipt given to client for monies deposited with attorney.

Clark v. State Bar (1952) 39 Cal.2d 161 [246 P.2d 1]. The purpose of keeping vouchers and receipts is to be prepared to make proof of the honesty and fair dealings of attorneys when their actions are called into question.

Medical Liens

Kaiser Foundation Health Plan v. Aguiluz (1996) 47 Cal.App.4th 302. The Court of Appeal held an attorney civilly liable for conversion for failing to honor a medical lien. The attorney, after attempting unsuccessfully to negotiate a reduction of the lien amount, paid the funds to the client. The court held that the insurer was entitled to its judgment against the attorney for the full amount owed by the client for health care costs. An attorney on notice of a third party's contractual right to funds received on behalf of a client disburses those funds to the client at his or her own risk.

In the Matter of Riley (Rev. Dept. 1994) 3 Cal.State Bar Ct. Rptr. 91. An attorney must make efforts to determine how the client's medical bills have been paid. Ignorance of the client's statutory liens is gross negligence rather than good faith error. The attorney should have known of the existence of liens had a reasonable inquiry of the client been conducted.

In th Matter of Respondent P (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622. An attorney has a fiduciary obligation to the State Department of Health Services to ensure DHS has an opportunity to collect the money due under a medical lien created by operation of law (Welfare and Institutions Code section 14124.79). The attorney violated former rule 8-101(B)(4) (current rule 4-100(B)(4)) by distributing the settlement funds to the client. An attorney has a duty to notify DHS when a matter has settled prior to the distribution of the settlement proceeds.

In the Matter of Dyson (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280. An attorney is obligated to segregate funds in a trust account, maintain, and render complete records and pay or deliver the funds promptly on request in the presence of a medical lien. An attorney has no excuse for placing funds subject to medical liens in a general account because at no time do the funds belong to the attorney.

In the Matter of Mapps (Rev. Dept. 1990) 1 Cal. State Bar Rptr. 1. An attorney must keep sufficient funds in a trust account to pay the undisputed portion of treating doctor's medical lien. Gross negligence in record keeping and handling funds, affecting non-clients, constituted moral turpitude. (See also *Vaughn v. State Bar* (1972) 6 Cal.3d 847 [494 P.2d 1257, 100 Cal.Rptr. 713].)

Simmons v. State Bar (1969) 70 Cal.2d 361 [450 P.2d 291, 74 Cal.Rptr. 915]. When an attorney receives client money on behalf of a third party, he has a fiduciary duty to the third party.

Attorney's Liens

In the Matter of Feldsott (Rev. Dept. 1997) 3 Cal. St. Bar Ct. Rptr. 754, 756-758. Where a prior attorney took reasonable and appropriate steps to protect his lien on a former client's recovery, the prior attorney did not violate rule 4-100(B)(4) by refusing to sign a settlement check which was in the possession of the former client's successor attorney and which was payable to the former client, the prior attorney, and the successor attorney. The prior attorney agreed to release all funds not in dispute to his former client. He suggested binding fee arbitration and, while the dispute was pending, requested that the disputed part of the recovery be placed in an account requiring both his and his former client's signatures or be deposited in court until the resolution of the dispute.

In the Matter of Respondent H (Rev.Dept. 1992) 2 Cal.State Bar Ct. Rptr. 234. An attorney is a general creditor of the client and cannot reach monies held by the client's attorney absent an enforceable lien or judgment.

Baca v. State Bar (1990) 52 Cal.3d 294. The WCAB awarded recovery to the applicant and attorney's fees to both prior and subsequent counsel. The WCAB's adjudication caused the settlement funds to have client trust fund status. The attorney's conversion of the funds and failure to pay the prior attorney's liens constituted misappropriation, an act of moral turpitude.

Weiss v. Marcus (1975) 51 Cal.App.3d 390. A valid lien may be created by contract and will survive the prior attorney's discharge. The attorney was permitted to maintain an action against subsequent counsel for constructive trust, interference with contractual relationship, and conversion.

All Statements to Clients Showing Disbursements

Murray v. State Bar (1985) 40 Cal.3d 575 [709 P.2d 480, 220 Cal.Rptr. 677]. A finding of wilful misappropriation where the attorney failed to respond to his client's queries regarding funds held in trust.

Records Showing Payments to Attorneys, Investigators, Third Parties

Fitzsimmons v. State Bar (1983) 34 Cal.3d 327 [667 P.2d 700, 193 Cal.Rptr. 896]. Failure to obtain a receipt for the disbursement of cash on a client's behalf constitutes a violation of an attorney's oath and involves moral turpitude.

Other Documentary Support for All Disbursements and Transfers

In the Matter of Koehler (Rev. Dept. 1991) 1 Cal. State Bar Rptr. 615. Respondent committed moral turpitude in violation of Business and Professions Code section 6106 by intentionally secreting his own funds in a client trust account in order to conceal them from the Franchise Tax Board.

In the Matter of Heiner (Rev. Dept. 1990) 1 Cal. State Bar Rptr. 301. An attorney who repeatedly withdraws small amounts of cash for personal use from a trust account indicates that the attorney is improperly treating the trust account as a personal or general office account, and either allowing the attorney's own funds to remain in the trust account longer than they should, or misappropriating funds that properly belong to the clients. This is true regardless of the means by which the withdrawals are accomplished—check, ATM card, withdrawal slip, or other means.

Accounting for Fees

In the Matter of Cacioppo (Rev. Dept. 1992) 2 Cal. St. Bar Ct. Rptr. 128, 146. An attorney committed misconduct by providing a confusing, belated accounting to a client. The attorney also did not follow an acceptable procedure to ensure informed consent of the client to the application of her recovery to pay attorney's fees. In this case, the court found that the attorney must give the client an opportunity to review a bill before applying the client's recovery to pay attorney fees.

In the Matter of Fonte (Rev.Dept. 1994) 2 Cal.State Bar Ct. Rptr. 752. An attorney was obligated to maintain adequate records of monies drawn against a $5,000 advanced fee despite his claim that the fee was a retainer and "earned upon receipt." By failing to provide the client with an accounting regarding these funds, the attorney violated rule 4-100(B)(3), the client trust accounting rule, even though the rule does not refer specifically to attorney's fees.

Matthew v. State Bar (1989) 49 Cal.3d 784 [781 P.2d 952, 263 Cal.Rptr. 660]. An attorney should maintain time records or billing statements and account for unearned fees.

Maintain "Books" Showing the Trust Account Activity Relating to Each Client or Matter

In the Matter of Respondent F (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. An attorney cannot be held responsible for every detail of office operations. Nevertheless, an attorney is held responsible if the attorney fails to manage funds, regardless of the attorney's intent or the absence of injury to anyone. (See also *Palomo v. State Bar* (1984) 36 Cal.3d 785 [685 P.2d 1185, 205 Cal.Rptr. 834]; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962 [741 P.2d 172, 239 Cal.Rptr. 675].)

Maintain Books And Account To Third Parties

In the Matter of Kaplan (Rev. Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547. Where a client asks the attorney to distribute trust account funds claimed by both the client and a third party to whom the attorney owes a fiduciary duty, the attorney must promptly take affirmative steps to resolve the competing claims in order to disburse the funds.

Guzzetta v. State Bar (1987) 43 Cal.3d 962 [741 P.2d 172, 239 Cal.Rptr. 675]. An attorney's fiduciary obligation to account and pay funds extends to **both** parties claiming interest therein. Duty extends to opposing party spouse.

Maintain Separate Ledger Page or Card for Each Client

In the Matter of Yagman (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788. An attorney must maintain for a period of five years a written ledger for each client for whom funds are held detailing the date, the amount, and source of all funds received on behalf of the client, in compliance with the Trust Account Record Keeping Standards adopted by the Board of Governors of the State Bar. An attorney must promptly withdraw any undisputed portion of the funds pursuant to rule 4-100(A)(2), at the earliest reasonable time after the attorney's right to those funds becomes fixed.

Weir v. State Bar (1979) 23 Cal.3d 564 [591 P.2d 19, 152 Cal.Rprt. 921]. Fee ledger sheet used as evidence that all fees and costs had been paid by clients.

Vaughn v. State Bar (1972) 6 Cal.3d 847 [494 P.2d 1257, 100 Cal.Rptr. 713]. Attorney's records failed to show *receipt* of client funds. Holding client's funds in cash or cashier's checks disapproved without client's written consent to do so.

Regularly Perform Accounting Procedures

In the Matter of Respondent E (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716. Where fiduciary violations occur as the result of serious and inexcusable lapses in office procedure, they may be deemed "wilful" for disciplinary purposes, even if there was no deliberate wrongdoing. (See also *Palomo v. State Bar* (1984) 36 Cal.3d 785 [686 P.2d 1185, 205 Cal.Rptr. 834].)

Reconciliation (monthly/quarterly)

Friedman v. State Bar (1990) 50 Cal.3d 235 [786 P.2d 359, 266 Cal.Rptr. 632]. Attorney had no method by which he could reconcile or verify balances.

Miscellaneous

In the Matter of Davis (Rev. Dept. 2003) ___ Cal. State Bar Ct. Rptr. ___ [2003 WL 21904732, 2003 Daily Journal D.A.R. 8942]. An attorney representing a corporation must follow the instructions of appropriate corporate officers in the handling of trust funds. Where there is an intractable dispute among board members concerning distribution of trust funds, an attorney may interplead the funds to resolve conflicting instructions.

Farmers Insurance Exchange v. Smith (1999) 71 Cal. App.4th 660, 662 [83 Cal. Rptr.2d 911]. In an action to establish an equitable lien interest, the court found an insurer has no right to "press-gang a policyholder's personal injury attorney into service as a collection agent when the policyholder receives medical payments from the insurer and then later recovers from a third party tortfeasor. . . . The attorney is not the client's keeper."

In the Matter of Kroff (Rev. Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 854. Where a client asks an attorney to distribute trust funds and the attorney claims an interest in the funds, the attorney must promptly take appropriate substantive steps to resolve the dispute, such as fee arbitration.

In the Matter of Respondent F (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17. An attorney is permitted to keep in a client trust account his or her own funds reasonably sufficient to cover bank charges.

In the Matter of Bleeker (Rev. Dept. 1990) 1 Cal State Bar Rptr. 113. Gross carelessness and negligence in maintaining a client trust account constitutes a violation of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involves moral turpitude as they breach the fiduciary relationship owed to clients. (See also *Giovanazzi v. State Bar* (1980) 28 Cal. 3d 465 [619 P.2d 1005, 169 Cal.Rptr. 581].)

In the Matter of Trillo (Rev. Dept. 1990) 1 Cal. State Bar Rptr. 59. All funds held for a client's benefit, including the costs received must be placed in a proper trust account.

Guzzetta v. State Bar (1987) 43 Cal.3d 962 [741 P.2d 172, 239 Cal.Rptr. 675]. To restore funds wrongfully withdrawn from a trust account, an attorney may deposit personal funds into the trust account so long as evidence supports a finding that once deposited the attorney believes that the funds belong to the client and do not belong to the attorney.

Jackson v. State Bar (1979) 25 Cal.3d 398 [600 P.2d 1326, 158 Cal.Rptr. 869]. Attorney engaged in practice of depositing personal funds and unearned fees into client trust account to provide "margin" against overdraft is a violation.

APPENDIX 4: MODEL FORMS

CLIENT LEDGER

CLIENT:
CASE #:

DATE	SOURCE OF	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE

ACCOUNT JOURNAL

CLIENT TRUST BANK ACCOUNT NAME:

DATE	CLIENT	SOURCE OF	PAYEE, # & PURPOSE	CHECKS (SUBTRACT)	DEPOSITS (ADD)	RUNNING BALANCE

OTHER PROPERTIES JOURNAL

CLIENT/CASE #	ITEM	DATE RECEIVED	DATE DISBURSED	DISBURSED TO

FORM ONE: CLIENT LEDGER BALANCE

RECONCILIATION DATE:
CLIENT TRUST BANK ACCOUNT NAME:
PERIOD COVERED BY BANK STATEMENT:

CLIENT	CLIENT LEDGER BALANCE

TOTAL CLIENT LEDGER BALANCE:

MONTH ENDING ACCOUNT JOURNAL BALANCE: _____

TOTAL MISTAKE CORRECTION ENTRIES (+ or -): $ _____
(From Form Two)

ADJUSTED MONTH ENDING ACCOUNT JOURNAL BALANCE: _____

FORM TWO: ADJUSTMENTS TO MONTH ENDING BALANCE

RECONCILIATION DATE:
CLIENT TRUST BANK ACCOUNT NAME:
PERIOD COVERED BY BANK STATEMENT:

A. DEPOSITS AND WITHDRAWALS NOT POSTED ON BANK STATEMENT:

UNCREDITED DEPOSITS		UNDEBITED WITHDRAWALS	
Date	**Amount**	**Date**	**Amount**
TOTAL:			

B. MISTAKE CORRECTION ENTRIES (from Account Journal):

DATE	AMOUNT		NET MISTAKE
	Additions	**SubtractionsS**	**(+ or -)**
TOTAL MISTAKE CORRECTION ENTRIES:			

FORM THREE: RECONCILIATION

RECONCILIATION DATE:
CLIENT TRUST BANK ACCOUNT NAME:
PERIOD COVERED BY BANK STATEMENT:

ADJUSTED MONTH ENDING BALANCE: _____
(From Form One)

MINUS TOTAL BANK CHARGES: _____
(From Bank Statement)

PLUS TOTAL INTEREST EARNED: _____
(From Bank Statement)

CORRECTED MONTH ENDING BALANCE: _____
(Total)

MINUS UNCREDITED DEPOSITS: (_____)
(From Form Two)

PLUS UNDEBITED WITHDRAWALS: _____
(From Form Two)

RECONCILED TOTAL: _____

BANK STATEMENT BALANCE: _____

APPENDIX 5: WHAT TO DO WHEN THE RECONCILED TOTAL AND THE BANK STATEMENT BALANCE DON'T EXACTLY MATCH

If, after you've filled out Forms One, Two and Three, the Corrected Month Ending Balance for the client trust bank account doesn't exactly match the balance the bank statement shows for the account, it means that either your records are wrong, or the bank's records are wrong. Follow the steps detailed until you find the mistake; when you find it, go to "**Correcting the mistake**," below:

1. **Subtract the Bank Statement Balance from the Corrected Month Ending Balance so you know exactly what the difference is.** If there's only one mistake, knowing this number will help you recognize it. If there's more than one mistake, knowing this number will ensure that you don't stop looking too soon. Remember that until the whole difference is explained, you have to keep looking for mistakes.

2. **Check your copying.** In preparing the Reconciliation form, you may have copied numbers from the Adjustments to Month Ending Balance form incorrectly. That's the easiest mistake to detect, so first, check to see that you copied those numbers correctly.

3. **Check your math.** You probably did a lot of adding and subtracting to get those numbers, so check your math. (This will be a lot quicker if you kept an adding machine tape or other clear written record of your calculations.)

4. **Check each uncredited deposit and withdrawal you listed.** Go back through the account journal and, using the date on the Adjustments to Month Ending Balance form, find each unposted deposit and withdrawal you listed and check to make sure you copied it correctly onto the form. Make a light pencil mark on the form next to each item after you've made sure it's right so you don't miss any.

   Next, go through the account journal and make sure that every uncredited deposit and undebited withdrawal has been listed on the Adjustments to Month Ending Balance form. Since you marked every entry in the account journal that you found on the bank statement, this should be easy. Go back at least two months; you may have missed an old check that was never deposited.

5. **Compare the bank statement to the account journal and make sure that you have correctly marked all the items that had been credited.** You may have incorrectly marked off as credited an entry in the account journal that wasn't on the bank statement. Go through the bank statement item by item, and in the account journal put a clear additional mark next to every entry that matches the bank statement. When you're done, make sure that every item for the month you're reconciling has two marks: the one you put when you first prepared the Account Journal Balance form, and the one you just put next to every item you verified.

6. **Get last month's Adjustments to Month Ending Balance form and check the unposted deposits and withdrawals against the current month's bank statement.** Since you successfully reconciled your client trust bank account last month, any mistake must have happened in this month's records. Take out last month's Adjustments to Month Ending Balance form and compare the list of uncredited deposits and undebited withdrawals to this month's bank statement. With a light pencil mark, check off all the items in last month's list of unposted transactions that show up on this month's bank statement. Any that aren't

checked off are still unposted; therefore, they should be listed on this month's Adjustments to Month Ending Balance form. Make sure they are.

7. **Call in a bookkeeper.** You have now gone through all of the steps necessary to check your own records. The mistake is in there, but the chances are that you aren't going to find it. It's also possible that the difference between the reconciled balance and the bank statement balance is caused by something you can't find this way. Don't waste any more of your valuable time hunting; call in a professional.

Correcting the mistake. If the mistake is on the bank statement, write a note on the bank statement that clearly explains what the mistake is, then contact your banker and tell them to correct their records. Then go back to Form Three, put a line through the Bank Statement Balance (making sure that the original number is still legible) and write in the corrected Bank Statement Balance, which should be exactly the same as the Corrected Month Ending Balance, above it.

If the mistake is in your records, correct it in the account journal and appropriate client ledgers using the same kind of mistake correction entries we described. Like all mistake correction entries, these must be entered twice in both the account journal and the client ledger for the client on whose behalf you deposited or paid out the money; once above the "Corrected Month Ending Balance" line, and once after the latest entry.

After you correct the mistake in your client ledger and account journal, record it on Form Two under "Mistake Correction Entries" and change the "Total Mistake Correction Entries" on Form Two. Then go back to Form One, write in the new "Total Mistake Correction Entries" and new "Adjusted Month Ending Account Journal Balance." Then go to Form Three, write in the new "Adjusted Month Ending Balance," the new "Corrected Month Ending Balance" and the new "Reconciled Total." If you make so many corrections that the numbers are getting hard to read, rewrite the form.

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